



# Board Meeting Materials

Day Two – Friday, August 14, 2020  
10:00 a.m. until close of business

WebEx Teleconference

California State Board of Optometry  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834  
916-575-7170 [optometry.ca.gov](http://optometry.ca.gov)

**MEMBERS OF THE BOARD**

Mark Morodomi, JD, President  
Glenn Kawaguchi, OD, Vice President  
Debra McIntyre, OD, Secretary  
Cyd Brandvein  
Maria Salazar Sperber, JD  
David Turetsky, OD  
Lillian Wang, OD  
Vacant, Public Member  
Vacant, Public Member  
Vacant, Licensed Member  
Vacant, Licensed Member



**QUARTERLY BOARD MEETING AGENDA**

Thursday, August 13, 2020 and Friday, August 14, 2020

This public meeting will be held via WebEx Events. To participate in the Webex meeting, please log on to the website the day of the meeting using the links below.

**THURSDAY:** <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=e9d8e908d658901cc4ab8679ec9689fd5>  
Meeting Code: 145 385 3899 Meeting Password: Optometry81320

**FRIDAY:** <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=ef499b8316e198300f371150ea0152b98>  
Meeting Code: 145 428 5458 Meeting Password: Optometry81420

**NOTICE:** Pursuant to Governor Gavin Newsom's Executive Order N-29-20, in response to the COVID-19 pandemic, the meeting is being held entirely telephonically. No physical public location is being made available for public participation. Members of the public may observe or participate using the link above. Due to potential technical difficulties, please consider submitting written comments via email by August 3, 2020, to [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov) for consideration.

Action may be taken on any item on the agenda.

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**THURSDAY, AUGUST 13, 2020 – STRATEGIC PLANNING/FULL BOARD MEETING**  
**10:00 a.m. to Completion of Business**

WebEx link: <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=e9d8e908d658901cc4ab8679ec9689fd5>

Meeting Code: 145 385 3899 Meeting Password: Optometry81320

**1. Call to Order / Roll Call and Establishment of a Quorum**

**2. Public Comment for Items Not on the Agenda**

Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections [11125](#), [11125.7\(a\)](#)]

## **FULL BOARD MEETING – CLOSED SESSION**

3. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Deliberation on Disciplinary Matters before the Board

## **FULL BOARD MEETING – OPEN SESSION**

4. **Strategic Planning Overview (SOLID)**
    - A. Introductions
    - B. Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis
    - C. Environmental Scan
  5. **Re-establish Mission, Vision, and Values (SOLID)**
  6. **Objective Development (SOLID)**
    - A. Licensing
    - B. Examination
    - C. Law and Regulation
    - D. Enforcement
    - E. Outreach
    - F. Board Administration
  7. **Executive Officer's Report**
    - A. Enforcement Program
    - B. Examination and Licensing Programs
    - C. Regulatory Update
    - D. Committee Meeting Updates
  8. **Discussion and Possible Approval of May 15, 2020 Board Meeting Minutes**
  9. **Update, Discussion and Possible Action on Assembly Bill 896 (Low)**
  10. **Future Agenda Items**
  11. **Adjournment Until Friday, August 14, 2020**
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## **FRIDAY, AUGUST 14, 2020 – FULL BOARD OPEN SESSION** **10:00 a.m. to Completion of Business**

WebEx link : <https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=ef499b8316e198300f371150ea0152b98>

Meeting Code: 145 428 5458 Meeting Password: Optometry81420

12. **Call to Order / Roll Call and Re-establishment of a Quorum**
13. **Public Comment for Items Not on the Agenda**

*Note: The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections [11125](#), [11125.7\(a\)](#)]*

- 14. Board President's Report**
  - A. Recognition of Past Board and Committee Members
- 15. Call for Nominations for Board Officer Elections**
- 16. Discussion and Possible Action on Appointment of Non Boardmembers to Board Committees**
  - A. Dr. Madhu Chawla, OD to Practice and Education Committee
- 17. Discussion and Possible Action Regarding Which Board Member Should be Appointed to Serve on the Dispensing Optician Committee Pursuant to Business and Professions Code Section 3020**
- 18. Discussion and Possible Action on Presentation by the National Board of Examiners in Optometry for Additional Test Locations**
- 19. Update by Representatives of the Department of Consumer Affairs, Which May Include Updates, Discussion and Possible Action Pertaining to the Department's Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters**
  - A. Department of Consumer Affairs
  - B. Budget Office
- 20. Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1536 (Continuing Education Regulations)**
- 21. Update, Discussion and Possible Action on Changes to Title 16 California Code of Regulations Sections 1399.270 – 1399.285 (Optician Program Regulations)**
- 22. Update, Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)**
- 23. Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1399.273 and Optician Disciplinary Guidelines Incorporated by Reference**
- 24. Future Agenda Items**
- 25. Adjournment**

Meetings of the California State Board of Optometry are open to the public except when specifically noticed otherwise in accordance with the Bagley-Keene Open Meeting Act. Public comments will generally be taken on agenda items at the time the specific item is raised. Time limitations will be determined by the Chairperson. The Board may take action on any item listed on the agenda, unless listed as informational only. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Board at 916-575-7170, email [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov) or mailing a written request to Kristina Eklund at the California State Board of Optometry, 2450 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, President
<b>SUBJECT</b>	Agenda Item #12 – Call to Order/Roll Call and Re-establishment of a Quorum

Board President Mark Morodomi will call the meeting to order. Please note the date and time for the record. Also please note the meeting being held is via teleconference pursuant to the Governor’s Executive Order NO-29-20.

Board Secretary Debra McIntyre, will call roll to re-establish a quorum of the Board.

- Mark Morodomi
- Glenn Kawaguchi, O.D.
- Cyd Brandvein
- David Turetsky, O.D.
- Debra McIntyre, O.D.
- Lillian Wang, O.D.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, Board President
<b>SUBJECT</b>	Agenda Item #13 – Public Comment for Items Not on the Agenda

The Board welcomes public comment for items not on the agenda.

**Please note:** The Board may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, Board President
<b>SUBJECT</b>	Agenda Item #14 – Presentation, Discussion and Possible Action on President’s Report – Recognition of Past Board Members

### A. Recognition of Past Board Members

The Board would like to recognize the following past members whose terms expired on June 1, 2020:

- Dr. Madhu Chawla, O.D.
- Martha “Ruby” Garcia, SLD, CLD
- Rachel Michelin





## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, Board President
<b>SUBJECT</b>	Agenda Item #15 – Call for Nominations for Board Officers

[Business and Professions Code § 3014](#) states that the board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor. All officers may be elected on one motion or ballot as a slate of officers unless more than one Board member is running per office. An officer may be re-elected and serve for more than one term.

Pursuant to the [Board's Administrative Manual](#), the Board President is required to solicit nominees not less than 45 days prior to the open election of new Board officers. With the next Board meeting scheduled for October 23, 2020, the nomination and timeline process are set out below.

### **Nomination and Timeline**

Nomination Ballots Distributed	Friday, August 14, 2020
<b>Ballots Must be Received</b>	<b>Monday, August 31, 2020</b>
Nominees Notified	Thursday, September 3, 2020
<b>Nominees Confirm Acceptance and Submit Statements</b>	<b>Monday, September 21, 2020</b>
Secretary/Staff Compile Nominee Statements	Friday, September 25, 2020
Nominee Statements Posted with Meeting Materials	Friday, October 9, 2020
<b>Election of New Officers</b>	<b>Friday, October 23, 2020</b>
<b>New Officers Assume Duties</b>	<b>Conclusion of October 23<sup>rd</sup> Meeting</b>

Specific duties, as identified in the Board Member Handbook, are as follows:

### **President**

- **Board Business:** Conducts the Board's business in a professional manner and with appropriate transparency, adhering to the highest ethical standards. Shall use Roberts Rules of Order as a guide and shall use the provisions of the Open Meeting Act during all Board Meetings.
- **Board Vote:** Conducts roll call vote

- **Board Affairs:** Ensures that Board matters are handled properly, including preparation of pre-meeting materials, committee functioning and orientation of new Board Members.
- **Governance:** Ensures the prevalence of Board governance policies and practices, acting as a representative of the Board as a whole.
- **Board Meeting Agendas:** Develops agendas for meetings with the Executive Officer and Legal Counsel. Presides at Board Meetings.
- **Executive Officer:** Establishes search and selection committee for hiring an Executive Officer. The committee will work with the DCA on the search. Convenes Board discussions for evaluating Executive Officer each fiscal year.
- **Board Committees:** Seeks volunteers for committees and coordinates individual Board Member assignments. Makes sure each committee has a chairperson and stays in touch with chairpersons to be sure that their work is carried out. Obtains debrief from each Board Committee chairperson and reports committee progress and actions to Board at the Board Meeting.
- **Yearly Elections:** Solicits nominees not less than 45 days prior to open elections at Board Meeting.
- **Community and Professional Representation:** Represents the Board in the community on behalf of the organization (as does the Executive Officer and Public Outreach Committee).

### Vice President

- **Board Business:** Performs the duties and responsibilities of the President when the President is absent.
- **Board Budget:** Serves as the Board's budget liaison with staff and shall assist staff in the monitoring and reporting of the budget to the Board. Review budget change orders with staff.
- **Strategic Plan:** Serves as the Board's strategic planning liaison with staff and shall assist staff in the monitoring and reporting of the strategic plan to the Board.
- **Board Member On-Boarding:** Welcomes new members to the Board, is available to answer questions, and assist new Board Members with understanding their role and responsibilities. May participate in on-Boarding meeting with staff and new members.

### Secretary

- **Attendance:** Calls roll to establish quorum
- **Board Motions:** Restates the motion prior to discussion.
- **Board Business:** Reviews draft minutes for accuracy.
- **Board Minutes:** Ensures accuracy and availability, including but not limited to date, time and location of meeting; list of those present and absent; list of items discussed; list of reports presented; and text of motions presented and description of their disposition. Reviews and provides edits to draft minutes which have been transcribed by staff following recorded webcasts, note taking and other methods to record public meetings.
- **Yearly Elections:** Reviews template for nominee statements and oversees the compilation of statements for inclusion in Board Meeting Materials.
- **Board Documents:** Maintains copies of administrative documents, e.g., Board Member Handbook, Administrative Law Book, Bagley-Keene Open Meeting Act for reference during Board Meeting.



## OFFICER NOMINATION FORM

### Nominated Office:

- President
- Vice President
- Secretary

### Nominee:

- Cyd Brandvein
- Glenn Kawaguchi, O.D.
- Debra McIntyre, O.D.
- Mark Morodomi
- David Turetsky, O.D.
- Lillian Wang, O.D.
- 
- 

Nominated by:

Reason for Nomination:

***Please provide a brief description of why you believe this nominee is the best candidate for the selected office. Nominations can be made without any justification. This form may also be submitted in email format to the Executive Officer.***



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, Board President
<b>SUBJECT</b>	Agenda Item #16 – Discussion and Possible Action on Appointment of Non-Board members to Board Committees

The Board should discuss the appointment of a non-board member to a Board committee:

- Dr. Madhu Chawla, O.D. to the Practice and Education Committee.

Pursuant to the [Board Member Handbook](#), page 22:

“Notwithstanding the Dispensing Optician Committee, the President shall establish committees, whether standing or special, as necessary. The composition of the committees and the appointment of the members shall be determined by the Board President in consultation with the Vice President, Secretary and the Executive Officer. In determining the composition of each committee, the president shall solicit interest from the Board Members during a public meeting. The President shall strive to give each Board Member an opportunity to serve on at least one committee. **Appointment of non-Board Members to a committee is subject to the approval of the Board.**”

**If motion is desired:**

“I hereby move to approve the appointment of Dr. Madhu Chawla to serve on the Practice and Education Committee as a non-board member pursuant to the Board Member Handbook.”



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Shara Murphy, Executive Officer
<b>SUBJECT</b>	Agenda Item #17 – Discussion and Possible Action Regarding Which Board Member Should be Appointed to Serve on the Dispensing Optician Committee Pursuant to Business and Professions Code Section 3020

Pursuant to Business and Professions Code Section 3020(e):

*(e) After the initial appointments by the board pursuant to subdivision (a), the Governor shall appoint the registered dispensing optician members and the public members. The committee shall submit a recommendation to the board regarding which board member should be appointed to serve on the committee, and the board shall appoint the member to serve. Committee members shall serve a term of four years except for the initial staggered terms. A member may be reappointed, but no person shall serve as a member of the committee for more than two consecutive terms.*

With the vacancy on the Dispensing Optician Committee as a result of Ruby Garcia not being reappointed to the Board in June 2020, the DOC met to discuss the opening at the [July 23, 2020](#) public meeting. At that meeting, a motion was made to recommend either Dr. Glenn Kawaguchi or Dr. Debra McIntyre to the vacant position on the DOC, with the additional recommendation the person be a professional member of the board.

Staff requests discussion on these recommendations. At present, the DOC currently only has three out of five members with the vacancy of Ruby Garcia and Khan Mattoo (who was also not reappointed to the committee as of June 2020). The next DOC meeting is scheduled for September 17, 2020.

**If a motion is desired:**

“I hereby move to approve the appointment of \_\_\_\_\_ to serve on the Dispensing Optician Committee pursuant to BPC 3020.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Shara Murphy, Executive Officer
<b>SUBJECT</b>	Agenda Item #18 – Discussion and Possible Action on Presentation by the National Board of Examiners in Optometry for Additional Test Locations



## Association of Regulatory Boards of Optometry

200 South College Street  
Suite 2030  
Charlotte, NC 28202

Tel: (704) 970-2710  
Fax: (888) 703-4848  
Email: [arbo@arbo.org](mailto:arbo@arbo.org)

July 15, 2020

ARBO Member Boards:

ARBO was recently copied on correspondence from Marshall B. Ketchum University to the National Board of Examiners in Optometry (NBEO) stating concerns, due to COVID-19, for students having to travel to Charlotte, NC to take the part III Exam. MBKU has asked NBEO to come up with an alternative, including temporarily conducting the exams at the optometry schools and they have offered space at their school as an alternative site for students on the west coast.

While it is reasonable to explore options for a temporary 'fix', the fix cannot be at the expense of losing exam validity. We cannot compromise the test for the sake of the student convenience at the expense of the public. There are many reasons why testing is no longer done at the schools. No standardization, poor control over testing parameters, questionable validity and therefore poor defensibility. There are also conflicts of interest that may not be able to be managed. From an ARBO/NBEO and regulatory standpoint, that is going backwards.

I wanted to let you know that Dr. Lewis Reich, NBEO President, and I have agreed to assemble a task force to further address this issue. We will do our due diligence in exploring all viable options. However, at the end of the day, the schools will have to accept the fact that the NBEO exams are a tool for ARBO's Member Boards and ARBO's job is to protect the integrity, validity and defensibility of that tool.

I understand the frustration of the schools with regard to this life-altering pandemic. In this environment, all our social and professional systems work less well. Everyone is looking for alternatives, but if the alternative is to allow a sub-standard candidate to obtain a license, the problems just compound.

NBEO feels that they need to continue administering Part III at the National Center of Clinical Testing in Optometry in Charlotte at the present time. They have implemented numerous safety measures to minimize potential transmission of COVID-19. They recognize that travel has become more difficult in recent months. Should any candidate feel unsafe making the trip to Charlotte, NBEO will waive the typical rescheduling fees and work with the candidate to reschedule their examination for a time that they would feel more comfortable.

Further, in addition to measures already in place, the NBEO Board of Directors, Examinations Committee, and staff have been researching and discussing alternative testing methodologies. At this time, they do not know of a way that remote testing in geographically dispersed locations can be administered to adequately safeguard exam integrity and protect the health and safety of a key exam stakeholder: the general public.

ARBO wanted to make you aware of this issue and will keep you apprised of the findings of the Task Force. If you have any questions or comments please contact Lisa Fennell, ARBO Executive Director, at [LFennell@arbo.org](mailto:LFennell@arbo.org).

Best Regards,

Patrick O'Neill, OD, FAAO  
ARBO President



# NATIONAL BOARD OF EXAMINERS IN OPTOMETRY

## California Board of Optometry Practice and Education Committee June 26, 2020

**Jill Bryant, OD, MPH, FAAO, FSLs**  
**Brooke Houck, PhD**



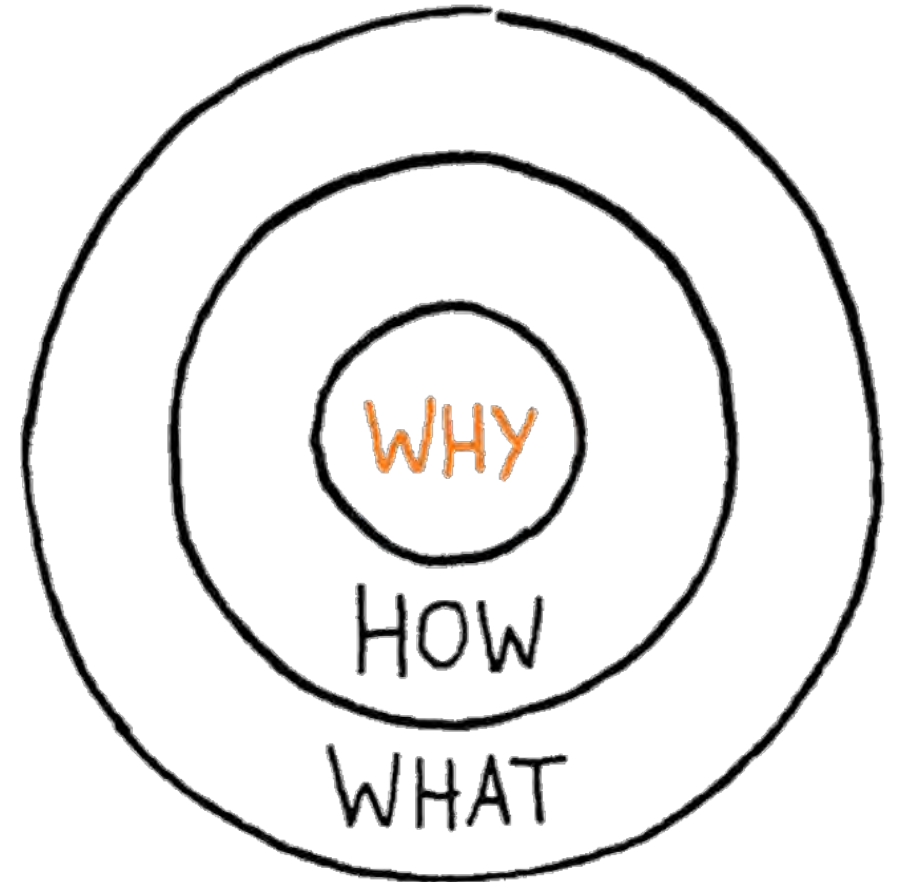


# Mission Statement

To *serve the **public*** and the profession of optometry by developing, administering, scoring, and reporting results of valid examinations that assess competence.

# Statement of Examinations Purpose: Our “Why”

The overall purpose of NBEO exams is to **protect the public** as it relates to practitioners seeking licensure and to ensure that those who are granted a license possess the knowledge, clinical thinking, and skills necessary for entry into the *independent* practice of optometry.



# How do we achieve our purpose?

- *Differentiating those who **do** have the necessary expertise from those who do **not** at the level of the **Minimally Qualified Candidate (MQC)**.*
- *NBEO examinations **must be sufficiently demanding and rigorous to meet the “good faith” expectations of public protection in those being licensed.***



# Participation in NBEO Examination Process



**16 Full Time Staff**



**~30 Part Time Standardized Patients**



**82 Remote Examiners**



**14 In-House Examiners**



**56 Development Committee Members**



**37 Council Members**

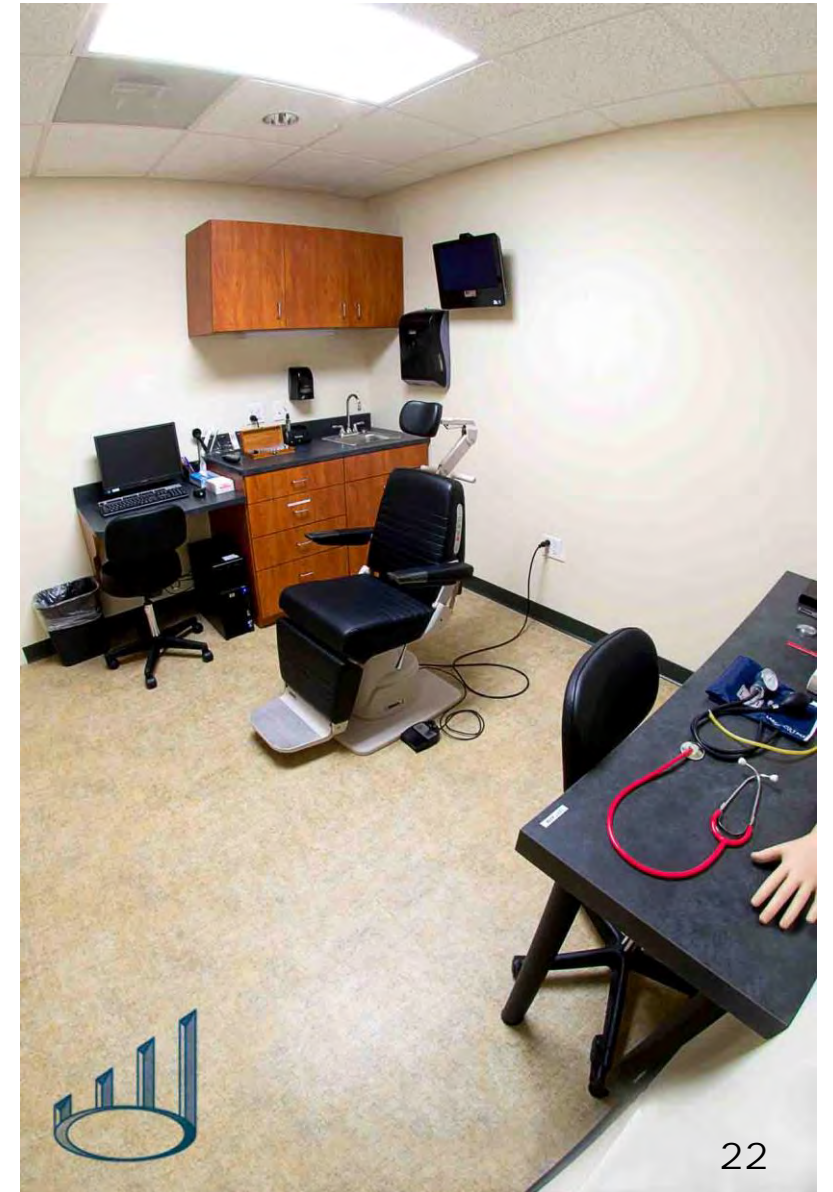


# National Center of Clinical Testing in Optometry

Charlotte, North Carolina



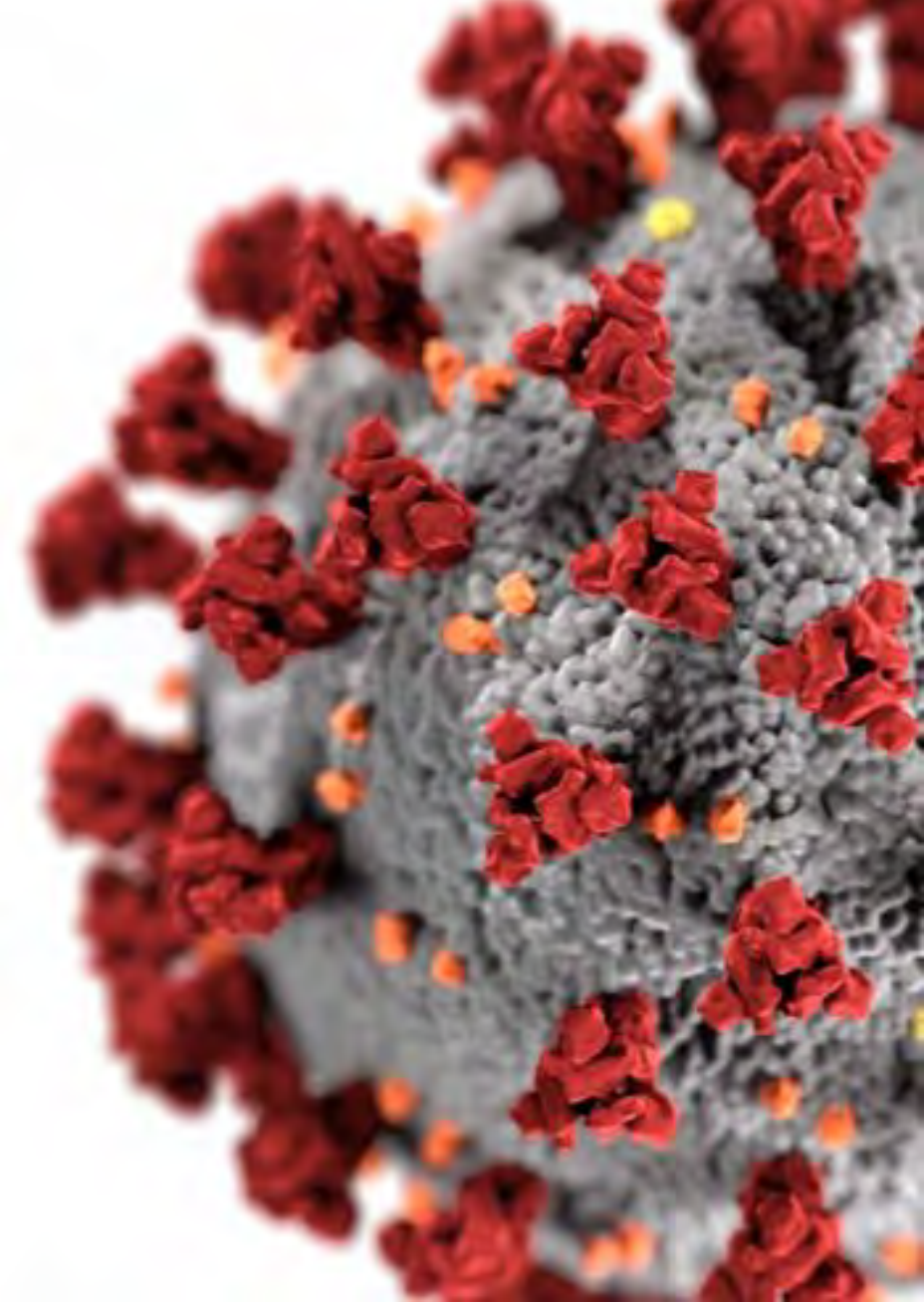
# National Center of Clinical Testing in Optometry (NCCTO)



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# COVID-19

The world has changed.



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# Mid-March 2020: our nation began closing

## **National Center of Clinical Testing in Optometry**

- Temporary testing suspension (began March 17)

## **Pearson VUE testing center closures**

- March Part I ABS cancelled
- April Part II PAM/TMOD cancelled



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# NCCTO: BALANCING SAFETY AND FULFILLING OUR MISSION

**Commitment to test candidates so that jurisdictional boards can make licensure decisions**

**VS.**

**Need to keep candidates and staff safe**



# REOPENED MAY 18, 2020



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# NCCTO: TESTING SCHEDULE

- ~250 candidates in need of rescheduling
- Reopened May 18 through June 25
- Provided over 300 appointment times (evenings, weekends)

**Opportunity for everyone in Class of 2020 to complete Part III CSE and ISE**

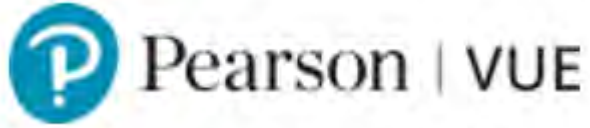
**Relaxed rescheduling rules: No penalty for candidates to reschedule if prefer**

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# LONG-TERM CONSIDERATIONS AND CONTINGENCY PLANNING/SECOND-WAVE SHUTDOWN

- Protocol documentation for future crisis scenarios
- Breaks built into schedule throughout the year to accommodate issues that arise with more flexibility
- Standardized Patient recruitment
- Second shift staff for all key NCCTO positions
- Ability to quickly add evening/weekend testing sessions if necessary

# NBEO Part I ABS and Part II PAM/TMOD



## Rescheduling Challenges:

- Reopened with social distancing 50% capacity rules in place (15 seat centers are now 8 seat centers, 30 seat centers are now 15 seat centers)
- Pent up demand from all clients
- Staffing challenges (50% through targets; already hired 400 staff members and still hiring/training/onboarding)
- Staff shortages = unopen centers
- Regulations in specific geographic areas that complicate operations

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# NBEO Actions Steps

- Daily Communications with Pearson VUE team
- Worked with Pearson VUE capacity team to identify examination windows that could be used for Part I ABS and Part II PAM/TMOD candidates
- Expanded testing window (3 weeks in July-Aug and 3 weeks in November)
- Utilization of 10 temporary testing center locations that are functioning as Pearson Professional Centers

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# NBEO Actions Steps

- Authorization from Pennsylvania Governor's Office for NBEO candidates to test in Pennsylvania county Pearson Professional Centers
- Security plan developed with assistance of Caveon and implemented with Pearson VUE considering longer testing windows
- Candidate Escalation Form and communications with Pearson VUE regarding issues
- NBEO full Board of Directors has met with Pearson VUE leadership

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# Pearson VUE Continued Actions

- Increased business hours in as many locations as possible (24 hour centers, open 6am)
- Increased operational days in as many locations as possible (weekends: Saturday and Sunday testing)
- Hiring staff = opening more centers
- Temporary Testing Centers
- Active conversion of lower-stakes clients to On-VUE



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# COMMUNICATIONS PLAN

## External

- **Multiple emails to impacted candidates**
- **All updates posted to our website**
- **Multiple communications through our stakeholder groups (ARBO, ASCO, AOSA, Deans and Presidents)**

## Internal

- **Training to Staff, Standardized Patients, Examiners**

# NBEO Continual Steps

- Build Trust
- Create Transparency (as possible)
- Maintain Integrity

# Alternative Testing Considerations in Response to COVID-19

Brooke Houck, PhD

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# Computer-Based Tests (ABS, PAM, and TMOD) Alternative Delivery Methods Considered

1. Remote proctoring
2. Paper and pencil testing
3. Utilization of the Schools and Colleges of Optometry to administer the examination in a Computer-Based format

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## Remote Proctoring

- We are watching this technology closely as it develops further.
- At this time, does not offer enough test security.

## Paper & Pencil Testing

- The protocols for maintaining test integrity take time to establish.
- A paper form of these tests would take at least a year to put into place.

## Computer-Based Testing at the Schools

- Different experiences at different schools.
- Extensive time delay to switching test files from PearsonVUE format to another format.

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# Standardization

- Concerns about fairness and bias are associated with any test administration method that significantly reduces standardization.
- Standardization is what makes a test reliable and fair.
- We are in an IMPERFECT situation given the global pandemic, but we are working hard to maintain the standardization and security of our exams, thus maintaining the validity and reliability of the exams.

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# Key Points

- Changing our test delivery method (to any other format than at PearsonVUE Professional Centers) will take time to ensure the test remains psychometrically sound.
- NBEO is engaging in **ongoing** research into alternative test delivery methods.
  - While these alternative delivery methods will not alleviate test scheduling issues now, we are continuing our research to build future contingency plans.

# One-Site: National Center for Clinical Testing in Optometry

**Brooke Houck, PhD**



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## TEST ADMINISTERED AT THE SCHOOLS

- Prior to the opening of the NCCTO<sup>®</sup>, the Part III, Clinical Skills Exam was administered at several locations over the course of 3 weekends in April each year
- This process required 550 Examiners, 17 Site Coordinators, 400 standardized patients, and many other support staff to administer the exam

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## THE DECISION TO MOVE TO ONE TESTING SITE

- A variety of factors underwrote the NBEO Board of Directors' decision to open a national testing center.
- These factors included the following concerns, among others:
  - Examiner Fatigue / Burnout
  - Standardization of Patients
  - Incident Reports related to lack of standardization
  - The lack of flexibility for candidates in scheduling their exam
- The NBEO made the decision to create the NCCTO®
- The one-site testing center opened in 2011

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## CHOOSING CHARLOTTE, NC

- **The NBEO Board of Directors conducted a rigorous study to identify the best location for a testing center.**
  - The findings from this are available in the NBEO Report, “An Analysis of Best-Location Issues,” that can be found on our website at <https://www.optometry.org/articles.cfm>.
- **In 2018, NBEO re-evaluated testing site locations.**
  - The findings from the 2018 study were made available to you and we recommend you review the report closely.

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## PSYCHOMETRIC PERSPECTIVE ON MULTIPLE TEST SITES

- At the time of the development of the NCCTO<sup>®</sup>, psychometric concerns centered around standardization and exam reliability.
  - The less standardized the exam experience is, the less reliable the results of the exam are.
  - When standardization increases, exam reliability increases.

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## PSYCHOMETRIC PERSPECTIVE ON MULTIPLE TEST SITES

- Since the opening of the NCCTO<sup>®</sup>, issues related to standardization of dropped dramatically.
  - Incident reports have decreased substantially, and when an incident does occur, it is addressed systematically and in the same manner for every candidate.
  - All standardized patients throughout the exam go through the same training and receive feedback for continuous improvement.
  - Because the test is not administered in a narrow time frame, examiner fatigue and burnout is no longer an issue.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Shara Murphy, Executive Officer
<b>SUBJECT</b>	Agenda Item #19 - Update by Representatives of the Department of Consumer Affairs, Which May Include Updates, Discussion and Possible Action Pertaining to the Department's Administrative Services, Budgetary, Human Resources, Enforcement, Information Technology, Communications and Outreach, as Well as Legislative, Regulatory and Policy Matters

Representatives from the California Department of Consumer Affairs will offer updates in the following areas:

- A. Department of Consumer Affairs
- B. Budget Office



# ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry
<b>FROM</b>	Shara Murphy, Executive Officer Prepared by Marc Johnson, Policy Analyst
<b>SUBJECT</b>	Agenda Item #20 - Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1536 (Continuing Education Regulations)

**Summary/History:**

In 2019, the Board approved a series of changes to CCR Section 1536 (“Continuing Optometric Education; Purpose and Requirements”). Staff then began work on the regulatory rulemaking package to be submitted to DCA and then the Office of Administrative Law (OAL). In response to the COVID-19 coronavirus epidemic, staff proposed further changes including, the reinstatement of online courses as live instruction, an increase in self-study hours to 25, and additional requirements for CE providers. At the May 15, 2020 public Board meeting, the Board approved these changes and made others, but sent the regulation to the Practice and Education Committee for further discussion. The PEC discussed and sent back additional changes, detailed below.

**Action Requested:**

Approve text of Title 16, California Code of Regulations Section 1536 and Form CE-01 incorporated by reference into the regulation. If approved, staff will continue the regulatory rulemaking process to put into law, which will take 12-14 months to complete.

Suggested motion:

*“I move to approve proposed changes to Title 16, Section 1536 and the Form CE-01 as presented and discussed here today; and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review and if no adverse comments are received authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing.”*

**Proposed Changes to Section 1536 (Attachment A)**

The PEC made the following changes to the text, which are underlined for new text and ~~strikethrough~~ for deleted text and highlighted in **yellow** and **teal**.

Subsection (c)(1): The Board requested further discussion on a required test as part of self-study courses for CE credit. The PEC concurred with plainly expressing the necessity of a test component.

Subsection (c)(1)(F): Proposed subsection (F), which would have added “any other technology the Board chooses to adopt as adequate to accomplish this purpose”, was removed by Legal Counsel as being too vague as to future technologies.

Subsection (c)(4): Staff recommends striking “in person” from the requirement for continuing education course credit obtained by participation in a board meeting. DCA is developing technology to track attendance in Webex teleconference sessions, and has encouraged boards to use teleconference meeting as a best practice following the resolution of the COVID-19 pandemic. Teleconference meetings have significantly increased stakeholder and licensee participation across DCA’s 37 boards, bureaus, and commissions.

Subsection (d)(2)(B): The PEC heard testimony from the California Optometric Association regarding their use of pre-recorded sessions for reliable delivery. Consequently, the PEC recommends the addition of “presenting the content” to allow a course that may be pre-recorded but DOES allow for live Q&A during or after the content with the instructor who presented the material. The words “or is prerecorded” have been removed to align with this intent.

Subsection (e)(3): The Board changed “courses” to “activities” to better reflect the procedures used by COPE to approve their CEs. The PEC concurs with this change.

Subsection (f): Several changes were made to this section:

- Staff recommends the addition of “credit hours desired for approval” for each course and the “educational category” that the course may fall under. Without inclusion in regulation—the Board cannot require submission of this information, which is referenced frequently during the PEC approval process.
  - Staff has provided the relevant COPE descriptions so that the Board can create a list/reference of educational categories needed to complete the regulation.
- The PEC recommends keeping the course submission requirement at 45 days instead of 90, to accommodate real-world conditions of scheduling and preparations made by CE providers.

**Proposed Changes to Form CE-01, Rev. 5/20 (Attachment B):**

This form is incorporated by reference into Section 1536. New text is underlined and changes approved by the PEC are highlighted in yellow.

- Question added asking how many credit hours are desired for approval, with the reference to CCR 1536(d), which defines credit hours.
- Question added asking education category with reference to list/reference in regulation.



**California State Board of Optometry**

**Amend Section 1536 of Article 6.5 of Division 15 of Title 16 of the California Code of Regulations as follows:**

New text is underlined, existing text which is removed is ~~struck through~~. Text added or concurred in by the PEC is **highlighted in yellow**.

**§1536. Continuing Optometric Education; Purpose and Requirements.**

(a) Except as otherwise provided in Section 1536(b), each licensee shall complete 40 hours of formal continuing optometric education course work within the two years immediately preceding the license expiration date. Such course work shall be subject to Board approval. Up to eight hours of course work may be in the area of patient care management or ethics in the practice of optometry. Business management courses are not accepted by the Board.

(b) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Business and Professions Code Section 3041.3 shall complete a total of 50 hours of continuing optometric education every two years in order to renew his or her license. Thirty-five of the required 50 hours of continuing optometric education shall be on the diagnosis, treatment and management of ocular disease and consistent with Business and Professions Code section 3059, subdivision (e).

(c) Up to ~~20~~ 25 hours of required biennial course work may be accomplished by using any or all of the following alternative methods:

(1) Documented and accredited self study through correspondence or an electronic medium. Any course which is offered pursuant to this section must include a test component to determine the licensee's understanding and knowledge of the course. For the purposes of this section, "self study" means a form of learning that does not offer participatory interaction between the licensee and the instructor during the instructional period. This may be accomplished via the following methods:

(A) Audio or video pre-recorded teleconferences, webinars, seminars, podcasts, broadcasts or lectures via the internet.

(B) CD-ROMs played on a computer.

(C) Digital video discs.

(D) Books or materials as part of an independent or home study program.

(E) Programs or applications on a data-enabled device, such as a computer, tablet, or cellular phone specifically designed for this purpose.

(2) Teaching of continuing optometric education courses if attendance at such course would also qualify for such credit, providing none are duplicate courses within the two-year period.

(3) Writing articles that have been published in optometric journals, magazines or newspapers, pertaining to the practice of optometry (or in other scientific, learned, refereed journals on topics pertinent to optometry), providing no articles are duplicates. One hour of credit will be granted for each full page of printing or the equivalent thereof.

**Commented [JM1]:** The Board requested further discussion on a required test as part of a self study course for CE credit. The PEC concurs the need for explicit test component.

**Commented [JM2]:** Proposed subsection (F), which added "any other technology the Board chooses to adopt as adequate to accomplish this purpose", was removed by Legal Counsel as being too vague as to future technologies.

(4) A full day's in-person substantiated attendance at a California State Board of

equates to one hour of credit, up to a maximum of four credit hours.

(5) Completion of a course to receive certification in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or other association approved by the Board. Up to four credit hours shall be granted for this course.

(6) Any continuing education course approved for category 1 of the American Medical Association or category 1A of the American Osteopathic Association Continued Medical Education credits that contributes to the advancement of professional skill and knowledge in the practice of optometry.

(7) Participation as a subject matter expert in the creation of the Board's California Laws and Regulation Examination. Subject matter experts will receive one hour of continuing education credit for each hour attending a Board sponsored workshop, not to exceed eight twelve credits per renewal cycle.

(d)(1) A credit hour is defined as one classroom hour, usually a 50-minute period, but no less than that.

(2) All remaining hours shall be obtained through live and interactive course study. For purposes of this section, live and interactive course study is defined as:

(A) In-person lectures, in-person workshops, in-person demonstrations, or in-person classroom studies which allow participatory interaction between the licensee and the instructor during the instructional period; or

(B) Lectures, webinars, workshops or audio or video conferences delivered via the internet or computer networks which allow participatory interaction between the licensee and the instructor presenting the content during the instructional period. Any course which is offered pursuant to section (d)(2)(B) which is not live shall not qualify under this section.

**Commented [JM3]:** The PEC recommends addition of "presenting the content" to cover a course which may be pre-recorded but does allow for live q&a during or after the content with the instructor who taught the course.

**Commented [MJ4]:** The words "or is prerecorded" has been removed to align with the prior sentence.

(e) Continuing optometric education programs which are approved as meeting the required standards of the Board include the following:

(1) Continuing optometric education courses officially sponsored or recognized by any Western Association of Schools and Colleges accredited school or college of optometry.

(2) Continuing optometric education courses provided by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program.

(3) Continuing optometric education courses activities approved by the Association of Regulatory Boards of Optometry committee known as COPE (Council on Optometric Practitioner Education).

**Commented [JM5]:** The PEC concurs with this addition.

(f) Other continuing optometric education courses approved by the Board as meeting the criteria set forth in paragraph (g) below, after submission of the Continuing Education Course Approval Application (Form CE-01, Rev. 5/16-5/20), hereby incorporated by reference) course schedule, topical outline of subject matter, credit hours desired for approval, educational category, learning objectives, and curriculum vitae of all instructors or lecturers involved, to the Board not less than 45 days prior to

**Commented [MJ6]:** Staff recommends addition of credit hours requested for each course and the category the course may fall under. This will assist staff and the PEC in tracking and approving the information.

**Commented [JM7]:** The PEC recommends keeping this requirement at 45 days instead of 90, in order to allow for better scheduling and changes made by CE providers.

the date of the program. The Board may, upon application of any licensee and for good cause shown, waive the requirement for submission of advance information and request for prior approval. Nothing herein shall permit the Board to approve a continuing optometric education course which has not complied with the criteria set forth in paragraph (g) below.

(1) Course approvals shall be valid for two years from the date as approved by the Board. Each individual course shall be assigned a course approval number by the Board. This approval number is required to be listed on the completion certificate.

(2) The approved provider shall not use the Board's letterhead, seal, or logo on any course certificates, advertising, or solicitation.

(g) The criteria for judging and approving continuing education courses by the Board for continuing optometric education credit will be determined on the following basis:

(1) Whether the program is likely to contribute to the advancement of professional skills and knowledge in the practice of optometry.

(2) Whether the instructors, lecturers, and others participating in the presentation are recognized by the Board as being qualified in their field.

(3) Whether the proposed course is open to all optometrists licensed in this State.

(4) Whether the provider of any mandatory continuing optometric education course agrees to maintain and furnish to the Board and/or attending licensee such records of course content, dates and places of the course, course completion certificates, and attendance as the Board requires, for a period of at least ~~three~~ four years from the date of course presentation.

(h) Proof of continuing optometric education course attendance shall be provided in a form and manner specified in writing by the Board and distributed to all licensed optometrists in this State. Certification of continuing optometric education course attendance shall be submitted by the licensee to the Board upon request, and shall contain the following minimal information:

(1) Name of the sponsoring organization.

(2) Name, signature, practice address, and license number of the attending licensee.

(3) Subject or title of the course.

(4) Number of continuing optometric education hours provided for attending the course.

(5) Date the course was provided.

(6) Location where the course was provided.

(7) Name(s) and signature(s) of the course instructor(s).

(8) Such other evidence of course content or attendance as the Board may deem necessary.

(9) Course approval number as assigned by the Board, if applicable.

(10) Whether the course was pre-recorded or live.

~~Use of a A certificate of course completion provided by the Board is recommended required for any continuing optometric education course approved by the Board pursuant to the above. Such forms will be furnished by the Board upon request.~~

The Board will also recognize and utilize the Association of Regulatory Boards in Optometry's online Optometric Education (OE) Tracker system as proof of continuing education course attendance.

- (i) The following licensees shall be exempt from the requirements of this section:
- (1) Any licensee serving in the regular armed forces of the United States during any part of the two years immediately preceding the license expiration date.
  - (2) Any licensee who is renewing an active license for the first time, if he or she graduated from an accredited school or college of optometry less than one year from the date of initial licensure.
  - (3) Those licensees as the Board, in its discretion, determines were unable to complete sufficient hours of continuing optometric education courses due to illness, incapacity, or other unavoidable circumstances. An extension may be granted if the Board, in its discretion, determines that good cause exists for the licensee's failure to complete the requisite hours of continuing optometric education.
- (j) The Board, in its discretion, may exempt from the continuing optometric education requirements of this section licensees who for health reasons or other good cause cannot meet these requirements. Licensees requesting an exemption shall complete a Continuing Education Exemption Request (Form CE-E, Rev 2/2016) and submit it, along with all required supporting information, to the Board for its consideration at least thirty (30) days prior to the expiration of the license.
- (1) The Board may deny a request for exemption but at its discretion may grant the licensee an extension of up to one year to obtain the necessary continuing optometric education.
  - (2) A licensee whose requests for an exemption is denied and an extension is not granted shall otherwise comply with the provision of this section.
- (k) The Board may conduct an audit of any licensee's attendance of a continuing optometric education course as a means of verifying compliance with this section. A licensee shall maintain all course completion certificates or applicable records on file which are used for renewal purposes for a period of four (4) years from the license renewal date and shall provide these records to the Board upon request or in the event of an audit.
- (l) Licensees that are glaucoma certified pursuant to BPC section 1571 shall be required to complete 10 hours of glaucoma specific optometric continuing education every license renewal period. These 10 hours shall be part of the required 35 hours on the diagnosis, treatment and management of ocular disease.
- (m) A licensee may not repeat for credit the same course more than once within the two-year renewal timeframe.



## CONTINUING EDUCATION COURSE APPROVAL APPLICATION

**\$50 Mandatory Fee**

Pursuant to California Code of Regulations (CCR) §[1536](#), the Board will approve continuing education (CE) courses after receiving the applicable fee, the requested information below and it has been determined that the course meets criteria specified in CCR §1536(g). Course approvals shall be valid for two years from the date approved by the Board.

In addition to the information requested below, please attach a copy of the course schedule, a detailed course outline or presentation materials (e.g., PowerPoint presentation), and course learning objectives. Applications must be submitted **45 days** before the course presentation date. **Please type or print clearly.**

Course Title	Course Presentation Date	Course Hours
_____	_____	_____

### Course Provider Contact Information

<b>Provider Name</b> _____ <div style="display: flex; justify-content: space-around; width: 100%;"> <span>First</span> <span>Last</span> <span>Middle</span> </div>	
<b>Provider Mailing Address</b> Street _____ City _____ State _____ Zip _____ Phone _____	
<b>Provider Email Address</b> _____	
Will the proposed course be open to all California licensed optometrists?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Do you agree to maintain and furnish to the Board and/or attending licensee such records of course content, <u>dates and places of the course, course completion certificates</u> and attendance as the Board requires, for a period of at least <del>three</del> <u>four</u> years from the date of course presentation?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<u>Pursuant to CCR §1536 (c)(1), will the course be self-study?</u>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<u>If self-study, will a test component be required to determine the licensee's understanding and knowledge of the course?</u>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<u>If a live course, how will the Provider track individual attendance and participation? Pursuant to 16 CCR §1536(d)(2) these courses must allow for participatory interaction between the licensees and the instructor.</u>	Please describe in the supplemental attachment.
<u>How many credit hours are desired for approval? Pursuant to CCR §1536(d), a credit hour is defined as one classroom hour, not less than 50 minutes.</u>	<div style="border: 1px solid black; display: inline-block; width: 50px; height: 20px; text-align: center;">_____</div> hours
<u>List educational category recommended for course. Pursuant to CCR §1536, each course must fit into a category prescribed by the Board.</u>	<div style="border: 1px solid black; display: inline-block; width: 150px; height: 20px; text-align: center;">_____</div>



### Course Instructor Information

Please provide the information below and attach the curriculum vitae for each instructor or lecturer involved in the course. If there are more instructors in the course, please provide the requested information on a separate sheet of paper.

<b>Instructor Name</b>	
_____	_____
<b>First</b>	<b>Last</b>
_____	_____
<b>License Number</b> _____	<b>License Type</b> _____
<b>Phone Number</b> (    ) _____	<b>Email Address</b> _____

***I declare under penalty of perjury under the laws of the State of California that all the information submitted on this form and any accompanying attachments submitted is true and correct.***

\_\_\_\_\_  
*Signature of Course Provider*

\_\_\_\_\_  
*Date*



## **Course Qualification Manual**

*Revised February 2017*

**Includes:**        **COPE Accreditation Criteria and Standards for  
Commercial Support: Standards to Ensure  
Independence in CE Activities**



## ADDITIONAL RESOURCES:

### COPE COURSE CATEGORY DEFINITIONS

The following are the specific definitions of the individual course categories:

#### A. CLINICAL OPTOMETRY

**Contact Lenses (CL):** All aspects of contact lens applications.

**Functional Vision/Pediatrics (FV):** Those portions of optometric practice that deal with visual processing and neuro-optometric rehabilitation, including sports vision, binocular vision, and visual training or vision development courses.

**General Optometry (GO):** Any study in the area of the eye and vision care, which constitutes eye and vision research, or examination, diagnosis and treatment of anomalies of the human eye and visual system. For the purposes of these categories “General Optometry” excludes any other category enumerated here.

**Low Vision/Vision Impairment & Rehabilitation (LV):** All aspects of low vision devices, care and therapy.

**Public Health (PB):** Those portions of optometry focused on disease prevention and health promotion at a population level and considering evidence from the fields of biostatistics, environmental health, health policy and management of social and behavioral sciences.

**Examples:** Disease surveillance, vision screening, health disparities, determinants of health, health literacy, health education, environmental optometry, infection control, health services research, health law, health economics, evidence based practice, behavior change communication, cultural competency, etc.

#### B. OCULAR DISEASE

**Glaucoma (GL):** The study of the etiology, clinical pathophysiology, diagnosis, treatment, management, and the outcomes of therapeutic regimens.

**Examples:** Any course with major emphasis on diagnosis, treatment, and/or surgical and medical management of glaucoma (i.e., trabeculectomy, laser surgery for glaucoma).

**Injection Skills (IS):** Instruction and clinical training in subcutaneous, intramuscular, and intravenous injection for the purpose of therapeutic diagnosis and treatment of disease or anaphylaxis.

**Laser Procedures (LP):** The study and clinical training in the performance of any ophthalmic laser procedure of the anterior segment and adnexa.

**Examples:** SLT, ALT, LPI. YAG, Punctoplasty, etc.

**Peri-Operative Management of Ophthalmic Surgery (PO):** The study of all aspects of pre- and post-operative management of invasive ophthalmic surgery procedures (excludes Refractive Surgery).

**Examples:** Cataract surgery, blepharoplasty, strabismus surgery, keratoplasty, etc.

**Refractive Surgery Management (RS):** Instruction and/or clinical training in refractive or photorefractive technologies, which may include Perioperative Patient Management: Counseling and evaluation for indications or contraindications in patient selection, including recognition of associated complications and course of action in analysis and treatment.



**Examples:** Courses related specifically to management of PRK, RK and LASIK patients; corneal refractive surgery, etc.

**Surgery Procedures (Optometric) (SP):** Instruction and/or clinical training in the performance of ocular surgery procedures.

**Examples:** I&D of lesions, surgical lid lesion excision, suturing techniques, stromal micropuncture, chalazion curettage, etc.

**Treatment & Management of Ocular Disease: Anterior Segment (AS):** The study of the etiology, clinical pathophysiology, diagnosis, treatment, management, and outcomes of therapeutic regimens for anomalies of the anterior segment of the human eye.

**Examples:** Keratitis, anterior uveitis, conjunctivitis, blepharitis, lid anomalies, foreign body removal, etc.

**Treatment & Management of Ocular Disease: Posterior Segment (PS):** The study of the etiology, clinical pathophysiology, diagnosis, treatment, management, and outcomes of therapeutic regimens for anomalies of the posterior segment of the human eye.

**Examples:** Degenerative, infective, and vascular diseases of the retina/choroid/sclera and optic nerve, inclusive of all aspects of surgical care involving the posterior segment of the eye, i.e., retinopathies, neuropathies, retinal laser surgery, retinal detachment surgery, etc.

### C. RELATED SYSTEMIC DISEASE

**Neuro-Optometry (NO):** The study of the etiology, clinical evaluation, diagnosis, treatment and management of disease and disorders of the nervous system, both systemically and as it relates directly to the eye and visual system.

**Examples:** Includes all aspects of nervous system conditions involving the brain, cranial nerves, spinal cord, peripheral nerves, and corresponding muscles, i.e., multiple sclerosis, pituitary tumor, brain trauma, Myasthenia Gravis, papilledema, Horner's Syndrome, etc.

**Oral Pharmaceuticals (OP):** The study of the etiology, clinical evaluation, diagnosis and treatment of ocular disease using the appropriate indications, prescription utilization, and follow-up assessment of the oral medications used for ocular therapy.

**Pharmacology (PH):** The study of the interaction of chemical agents with biological systems.

**Examples:** Toxicology; adverse effects of systemic drugs; adverse effects of ocular drugs; control of ocular pain. Any courses related to medications and how they affect the various tissues or their mechanism of actions.

**Principles of Diagnosis (PD):** The study of the art and science of the process of determining the nature and circumstances of a diseased condition with emphasis on the biological and clinical procedures utilized in medical examination and disease differentiation, and underlying clinical pathophysiology, e.g., corneal topography, visual fields (unless specific to glaucoma); laboratory testing and imaging; fluorescein angiography; gonioscopy.

**Systemic/Ocular Disease (SD):** The study of the relationship of any anomaly of normal function of the human body and the possible manifestation of such as signs and/or symptoms in the eye or visual system.

**Examples:** General study of diabetes, HIV/AIDS, thyroid disease, etc., along with their ocular manifestations. Vascular diseases both systemic and ocular.



#### **D. OPTOMETRIC BUSINESS MANAGEMENT**

**Ethics/Jurisprudence (EJ):** The study of the body of law in the practice of optometry and its relationship to the Medicolegal system.

**Examples:** Any courses related to the rules and practice acts for optometry, or addressing medicolegal issues related to patient treatment, and liability concerns and issues.

**Practice Management (PM):** The study of management of the **business** affairs of optometric practice. *This includes the concepts of managed care and operations management, courses designed to help market practices, to educate office staff, to improve billing efficiency and coding skills, to improve clinical recordkeeping and to enhance fiscal efficiency. EHR and ICD-10 courses are included in this category. This does not include courses that are intended for personal enhancement or investment prowess.*



# ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry
<b>FROM</b>	Shara P. Murphy, Executive Officer <i>Prepared by Marc Johnson, Policy Analyst and Natalia Leeper, Opticianry Program Coordinator</i>
<b>SUBJECT</b>	Agenda Item #21: Update, Discussion and Possible Action on Title 16, Sections 1399.200 – 1399.285 of California Code of Regulations (Optician Program Regulations)

### **Summary/History:**

As part of the Dispensing Optician Committee’s statutorily mandated duties under BPC Section 3020, the DOC is charged with recommending registration standards and criteria for the registration of dispensing opticians, nonresident contact lens sellers, spectacle lens dispensers, and contact lens dispensers. As the optician statutory review is ongoing, this agenda item continues that mandate by reviewing existing optician program regulations.

Since the optician statutory review may spawn more substantive changes that will need to be implemented into regulation going forward, staff proposes minor changes to the existing regulations. It would be limited to placing current initial registration and renewal forms (used with the BreZE system), align current fees with the statute and make other non-substantive changes. These changes would not affect any existing operations or modify any current processes.

Similarly, the DOC and the Board had [previously approved](#) a regulatory package in November of 2017, but the previous staff did not continue the package due to missing and inaccurate information, such as incorrect fee amounts and application requirements. The DOC last reviewed the proposed text at the [June 18, 2020, public meeting](#), and recommended Board approval.

### **Action Requested:**

Approve recommended changes to the text of Title 16, California Code of Regulations sections 1399.220 through 1399.285. If approved, staff will begin the regulatory rulemaking process to which will take 14 -18 months to complete.

### Suggested motion:

*“I move to approve proposed changes to Title 16, Sections 1399.220 through 1399.285 of the California Code of Regulations as presented and discussed here today; and direct staff to submit the text to the Director of the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency for review and if no adverse comments are received*

*authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the matter for hearing.”*

**Changes to Regulation Text:**

Attachment A contains the Opticianry Regulation text, with staff's suggested changes. Where appropriate, the proposed new text is underlined and deleted text is ~~struck through~~.

**Article 1.**

§1399.200

Staff proposes removing the mention of the word 'chapter' throughout the sections and replace it with 'division' when referring to the division of the optician program regulations.

§1399.203.

Removal of the meaning of 'division', which was previously used when the optician program was under the Medical Board Division of Licensing. This term is no longer applicable. The section is also renumbered for consistency.

**Article 2.**

Staff proposes adding the current application requirements for each license type as it will appear in Breeze into regulation.

§1399.220(a)

This proposed subsection sets out requirements for the Registered Dispensing Optician Initial Application for registration. Information required includes business name, the 'doing business as' name, address of the business, contact information, and SSN/ITIN. For different types of businesses, different documentation is required such as leases, business licenses and applicable corporation documentation. Further, the application asks for the types of lenses being dispensed from the location and the information for the Spectacle Lens Dispenser and or Contact Lens Dispenser who will be performing such tasks. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(b)

This proposed subsection sets out requirements for an initial application for a Contact Lens Dispenser registration. It requires the name, address, contact information, date of birth, SSN/ITIN, gender and race, other state registrations and NCLE Exam information. It also requests possible military service information, employer information, whether the applicant has ever had a professional license suspended and background check information. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(c)

This proposed subsection sets out requirements for an initial application for a Spectacle Lens Dispenser registration. It requires the name, address, contact information, date of birth, SSN/ITIN, gender, race, other state registrations and ABO Exam information. It also requests possible military service information, employer information, whether the applicant has ever had a professional license suspended and background check information. Finally, the application

requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.220(d)

This proposed subsection sets out requirements for an initial application for a Nonresident Contact Lend Dispenser registration. It requires basic entity information such as business name, the 'doing business as' name, address of business, contact information, type of business, and SSN/ITIN. Additionally, it requests whether or not the applicant is licensed to sell contact lenses in their state of operation and information about the license, a toll-free number for consumer complaints, contact information for the person designated to handle Board inquiries and information on the applicant's designated agent. For different types of businesses, it requires applicable documentation such as leases, business licenses, applicable corporation documentation and an example of literature that is included in the contact shipment. Finally, the application requires a declaration by the applicant under the penalty of perjury that the information provided is true and accurate.

§1399.222(a)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(a). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(b)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(c). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(c)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(b). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

§1399.222(d)

This proposed subsection requests the same information for a Registered Dispensing Optician renewal application as in § 1399.220(d). The applicant would be required within BreEZe to verify the information previously submitted as part of the initial application and to make any changes as part of the renewal.

**Article 6.**

§1399.260

Registered Dispensing Optician fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.261

Contact Lens Dispenser fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.262

This text has been deleted as, per Department of Consumer Affairs policy, the Board no longer offers refunds.

§1399.263

Spectacle Lens Dispenser fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

§1399.264

Non Resident Contact Lens Seller fees have been updated to reflect the current statute and current fees charged through Breeze. Application and delinquent fees were added. Registration and renewal fees were corrected.

## Registered Dispensing Opticians of the California State Board of Optometry

Proposed text is underlined and deleted text is ~~strikethrough~~.

Amend Sections of Division 13.5 of Title 16 of the California Code of Regulations as follows:

### Article 1. General Provisions

#### § 1399.200. Citation.

This ~~chapter~~ division may be cited and referred to as the “Registered Dispensing Optician Regulations.”

*Note: Authority and reference cited: Section 2558, Business and Professions Code.*

#### § 1399.201. Location of Principal Office.

The principal office of the California State Board of Optometry for the purpose of the administration of the registered dispensing optician program is located at 2450 Del Paso Road, Suite 105, Sacramento, California 95834.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2554, Business and Professions Code.*

#### § 1399.203. Definitions.

For the purposes of the regulations contained in this ~~Chapter~~ Division, the term:

(a) “Board” means the California State Board of Optometry.

~~(b) “Division” means the California State Board of Optometry.~~

~~(b-e)~~ “Code” means the Business and Professions Code.

~~(c-d)~~ “Engaging in the business of a dispensing optician” means the filling of prescriptions of licensed physicians and surgeons or optometrists for prescription lenses, and as incidental to the filling of such prescriptions:

(1) Using a keratometer to measure the curvature of the cornea of the eye;

(2) Converting a compounded prescription for spectacle lens by means of an algebraic formula in order to (a) compensate for the different vertex distance between the eye and the refractionist's test lens and between the eye and lens actually dispensed or, (b) to determine the appropriate power of contact lenses in accordance with such prescription;

(3) Taking facial measurements, fitting and adjusting prescription lenses, and fitting and adjusting spectacle frames.

~~(d-f)~~ “Personal knowledge,” as used in Section 2552(b) of the code, means knowledge of the affiant which is not based on hearsay.

~~(e-g)~~ “Physician and Surgeon” means a physician and surgeon, holding a valid certificate issued by the Medical Board of California to practice medicine in the State of California.

~~(f-h)~~ “Prescription,” as used in Chapter 5.5, Division 2 of the code, means:



- (1) A written order from a physician and surgeon or optometrist for spectacle or contact lenses, or
- (2) An oral order from a physician and surgeon or optometrist for spectacle or contact lenses if such order is reduced to writing and a copy of such writing is sent to the prescribing physician or optometrist prior to the delivery of the lenses to the patient.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2550, 2552 and 2558, Business and Professions Code.*

#### **§ 1399.204. Delegation of Functions.**

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the ~~division~~ Board delegates and confers upon the executive officer of the ~~Board~~ Board, or his or her designee, all functions necessary to the dispatch of business of the ~~division~~ Board in connection with investigative and administrative proceedings under the jurisdiction of the ~~division~~ Board.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2555, Business and Professions Code; and 11500, Government Code.*

### **Article 2. Applications**

#### **§ 1399.220. Applications for Registration.**

All applications shall be submitted on a form prescribed by the ~~division~~ Board, accompanied by such evidence, statements or documents as therein required, and filed with the ~~division~~ Board at its principal office with the required fee.

(a) The Registered Dispensing Optician initial application for registration shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name, if applicable.
- (3) Address of record, including:
  - \_\_\_\_\_ (A) Street address;
  - \_\_\_\_\_ (B) City, state and zip code;
  - \_\_\_\_\_ (C) County; and
  - \_\_\_\_\_ (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
  - \_\_\_\_\_ (A) Sole Proprietor;
  - \_\_\_\_\_ (B) Partnership;
  - \_\_\_\_\_ (C) Professional Corporation;
  - \_\_\_\_\_ (D) S Corporation;
  - \_\_\_\_\_ (E) C Corporation;
  - \_\_\_\_\_ (F) Health Facility;

- (G) A Non-Profit Organization;
  - (H) Sole owner.
  - (7) Social Security Number or Individual Taxpayer Identification Number.
  - (8) The type(s) of lenses for which the business will be filling prescriptions.
  - (9) Whether the person(s) dispensing lenses is a registered contact lens dispenser or registered spectacle lens dispenser, if applicable.
  - (10) Contact information of any person designated to handle board inquires and complaints, including:
    - (A) First, Middle and Last Name;
    - (B) Title;
    - (C) Telephone number; and
    - (D) Email address, if any.
  - (11) Whether the applicant is the owner or operator of the business for which they are applying.
  - (12) Name(s) and registration number(s) of the contact lens dispenser or the spectacle lens dispenser who will be filling prescriptions for the registered dispensing optician.
  - (13) Applicable business documents, including but not limited to:
    - (A) Lease agreements;
    - (B) Agreements with subleased optometrist or ophthalmologist if applicable;
    - (C) Business License issued by the town, city or county if applicable;
    - (D) If a partnership, the partnership agreement;
    - (E) If a corporation, the articles of incorporation;
    - (F) If a corporation, a list of officers, stakeholders and directors;
    - (G) If a corporation, a letter of Good Standing from California Secretary of State;
    - (H) If a corporation, a letter of good standing or equivalent from the resident state, if applicable.
  - (14) Agent for service of process.
  - (15) A declaration by the applicant under penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.
- (b) The Contact Lens Dispenser application shall request the following information:
- (1) First, middle, and last names.
  - (2) Address of record, including:
    - (A) Street address;
    - (B) City, state and zip code;
    - (C) County; and
    - (D) Country.
  - (3) Telephone number.
  - (4) Email address, if any.
  - (5) Date of birth.

- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Spectacle Lens Dispenser Registration in the State of California.
- (10) Whether the applicant has been licensed in another state, and if so, the registration number, and the original issuance date.
- (11) Whether the applicant has taken and passed the National Contact Lens Examiner Examination or equivalent, and if so, the examination date, and state and city in which it was taken.
- (12) Whether the applicant is currently serving in the U.S. Armed Forces.
- (13) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (14) Whether the applicant is requesting expediting of the application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver;
- (15) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (16) Whether the applicant is currently employed at a registered dispensing optician business, and if applicable, the business name, registration number, and location address of the business.
- (17) Whether the applicant will furnish a live scan or fingerprint hard cards to the Board for a background check.
- (18) A declaration by the applicant under the penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(c) The Spectacle Lens Dispenser application shall request the following information:

- (1) First, middle, and last names.
- (2) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and
  - (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Contact Lens Dispenser Registration in the State of California.

- (10) Whether the applicant has been licensed in another state, and if so, the registration number and the original issuance date.
- (11) Whether the applicant has taken and passed the American Board of Opticianry Examination or equivalent, and if so, the examination date, and city and state in which it was taken.
- (12) Whether the applicant is currently serving in the U.S. Armed Forces.
- (13) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (14) Whether the applicant is requesting expediting of this application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (15) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (16) Whether the applicant is currently employed at a registered dispensing optician business, and if so, the business name, registration number, and location address of the business.
- (17) Whether the applicant will furnish a live scan or fingerprint hard cards to the Board for a background check.
- (18) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(d) The Nonresident Contact Lens Dispenser initial application for registration shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and
  - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
  - \_\_\_\_\_ (A) Sole Proprietor;
  - \_\_\_\_\_ (B) Partnership;
  - \_\_\_\_\_ (C) Corporation; or
  - \_\_\_\_\_ (D) Limited Liability Corporation.
- (7) Social Security Number or Individual Taxpayer Identification Number.
- (8) Whether the applicant is licensed or otherwise authorized to sell contact lenses in their state or country, including:
  - \_\_\_\_\_ (A) State or country name;

- (B) Whether the state or country issues a license, and the license number if applicable;
- (C) Whether the license is in good standing; and
- (D) License expiration date.
- (9) A toll-free telephone number, which is available at least six days a week and 40 hours per week in which consumers can call with questions and complaints
- (10) Contact information of person designated to handle board inquires and complaints, including:
  - (A) First, Middle and last name;
  - (B) Title;
  - (C) Telephone number; and
  - (D) Email address, if any.
- (11) Information of applicant's designated agent for service of process, including:
  - (A) Agent's first and last names;
  - (B) Agent's street address, city, state, and zip code;
  - (C) Agent's telephone number; and
  - (D) Email address, if any.
- (12) Applicable business documents, including but not limited to:
  - (A) Lease agreements;
  - (B) Agreements with subleased optometrist or ophthalmologist if applicable;
  - (C) Business License issued by the town, city or county if applicable;
  - (D) If a partnership, the partnership agreement;
  - (E) If a corporation, the articles of incorporation;
  - (F) If a corporation, a list of officers, stakeholders and directors;
  - (G) If a corporation, a letter of Good Standing from California Secretary of State;
  - (H) If a corporation, a letter of good standing or equivalent from the resident state and if applicable;
  - (I) A sample of literature that is included with the contact lens shipment.
- (13) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2555, Business and Professions Code; and 11500, Government Code.*

**§ 1399.221. Denial of Applications.** § 1399.220(a)

In the event an application is denied pursuant to Section 2552 or 2553.6 of the code, the ~~division~~ Board shall notify the applicant in writing within thirty days of the deficiencies or reasons for denial, and of the procedure for requesting a hearing on the denial.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2552, 2553 and 2553.6, Business and Professions Code.*

**§ 1399.222. Renewal Applications.**

A renewal application will be submitted on a form ~~provided~~ prescribed by the ~~division~~ Board, accompanied by the renewal fee and filed with the ~~division~~ Board at its office in Sacramento prior to the expiration date of the registration.

(a) The Registered Dispensing Optician renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and
  - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
  - (A) Sole Proprietor;
  - (B) Partnership;
  - (C) Professional Corporation;
  - (D) S Corporation;
  - (E) C Corporation;
  - (F) Health Facility;
  - (G) A Non-Profit Organization;
  - (H) Sole owner.
- (7) Social Security Number or Individual Taxpayer Identification Number.
- (8) The type(s) of lenses for which the business will be filling prescriptions.
- (9) Whether the person(s) dispensing lenses is a registered contact lens dispenser or registered spectacle lens dispenser, if applicable.
- (10) Contact information of any person designated to handle board inquires and complaints, including:
  - (A) First, middle and last name;
  - (B) Title;
  - (C) Telephone number; and
  - (D) Email address, if any.
- (11) Whether the applicant is the owner or operator of the business for which they are applying.
- (12) Name(s) and registration number(s) of the contact lens dispenser or the spectacle lens dispenser who will be filling prescriptions for the registered dispensing optician.
- (13) Agent for service of process.
- (14) A declaration by the applicant under penalty of perjury that the information provided, including all accompanying documents or other requested proof of

completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(b) The Spectacle Lens Dispenser renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and
  - (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Contact Lens Dispenser Registration in the State of California.
- (10) Whether the applicant is currently serving in the U.S. Armed Forces.
- (11) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (12) Whether the applicant is requesting expediting of this application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (13) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (14) Whether the applicant is currently employed at a registered dispensing optician business, and if so, the business name, registration number, and location address of the business.
- (15) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(c) The Contact Lens Dispenser renewal application shall request the following information:

- 1) First, middle, and last names.
- (2) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and

- (D) Country.
- (3) Telephone number.
- (4) Email address, if any.
- (5) Date of birth.
- (6) Social Security Number or Individual Taxpayer Identification number.
- (7) Gender.
- (8) Race.
- (9) Whether the applicant also holds a Spectacle Lens Dispenser Registration in the State of California.
- (10) Whether the applicant is currently serving in the U.S. Armed Forces.
- (11) Whether the applicant is requesting expediting of the application for spouses or domestic partners of an active duty member of the Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver.
- (12) Whether the applicant is requesting expediting of the application for honorably discharged members of the U.S. Armed Forces, and if applicable, a copy of DD-214 or other supporting documentation for the waiver;
- (13) Whether the applicant has ever had a professional license suspended, revoked or otherwise disciplined, or has ever had to surrender such license in California or any other state or territory of the United States.
- (14) Whether the applicant is currently employed at a registered dispensing optician business, and if applicable, the business name, telephone number, registration number, and location address of the business.
- (15) A declaration by the applicant under the penalty of perjury that the information provided, including all accompanying documents or other requested proof of completion, is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

(d) The Nonresident Contact Lens Dispenser renewal application shall request the following information:

- (1) First, middle, and last names.
- (2) Organizational name, or “Doing Business As” name if applicable.
- (3) Address of record, including:
  - (A) Street address;
  - (B) City, state and zip code;
  - (C) County; and
  - (D) Country.
- (4) Telephone number.
- (5) Email address, if any.
- (6) Entity type:
  - \_\_\_\_\_ (A) Sole Proprietor;
  - \_\_\_\_\_ (B) Partnership;
  - \_\_\_\_\_ (C) Corporation; or
  - \_\_\_\_\_ (D) Limited Liability Corporation.
- (7) Social Security Number or Individual Taxpayer Identification Number.



(8) A toll-free telephone number, which is available at least six days a week and 40 hours per week in which consumers can call with questions and complaints

(9) Contact information of person designated to handle board inquires and complaints, including:

(A) Name:

(B) Title:

(C) Telephone number; and

(D) Email address, if any.

(10) Information of applicant's designated agent for service of process, including:

(A) Agent's first and last names;

(B) Agent's street address, city, state, and zip code;

(C) Agent's telephone number; and

(D) Email address, if any.

(11) A declaration by the applicant under penalty of perjury that the information provided including all accompanying documents or other requested proof of completion is true and accurate, and that the applicant understands and agrees that any misstatements of material facts may be cause for denial of the application and discipline by the board.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2554, Business and Professions Code.*

### **§ 1399.223. Abandonment of Application.**

An applicant shall be deemed to have abandoned an application if he or she does not complete the requirements for registration within one year from the date on which the application was filed. An application submitted subsequent to an abandoned application shall be treated as a new application.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2551, Business and Professions Code.*

## **Article 3. Prescriptions for Ophthalmic Devices**

### **§ 1399.230. Oral Prescriptions.**

If an oral prescription or order is received for lenses the order shall be reduced to writing and a copy of such writing sent to the prescribing physician or optometrist prior to the delivery of the lenses to the patient.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2550, Business and Professions Code.*

### **§ 1399.231. Retention of Records.**

All written prescriptions or oral prescriptions which have been reduced to writing shall be retained for three years after the dates such prescriptions have been filed.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2550, 2555 and 2556, Business and Professions Code.*

**§ 1399.232. Ophthalmic Devices.**

The minimum quality standards for prescription ophthalmic devices sold, dispensed or furnished by registered dispensing opticians are the current standards of the American National Standard Institute Z80.1 and Z80.2.

*Note: Authority cited: Section 2541.3, Business and Professions Code. Reference: Section 2541.3, Business and Professions Code.*

**§ 1399.233. Evaluation of Contact Lenses.**

In accordance with Section 2562 of the Code, a registered contact lens dispenser shall ensure that a written statement is enclosed with each contact lens container which directs the person named in the contact lens prescription to return to the prescribing physician or optometrist for an evaluation within 60 days.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2562, Business and Professions Code.*

**Article 4. Changes of Business Name, Business Address, or Ownership**

**§ 1399.240. Change of Business Name or Address.**

A registrant shall report to the ~~division~~ Board in writing within ten working days any change of the business name or address. The ~~division~~ Board shall change its records accordingly and shall notify the registrant in writing of the change. There is no fee for recording such a change.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2553 and 2554, Business and Professions Code.*

**§ 1399.242. Change of Ownership.**

The ~~division~~ Board shall be promptly notified by the registrant when there is a change in the ownership of the registrant, and the certificate of registration shall immediately be returned to the ~~division~~ Board for cancellation. No new certificate of registration shall be issued until the previous certificate is cancelled. If there is such a change, the new registrant shall file a new application and pay the prescribed application and initial registration fees.

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Sections 2551 and 2553, Business and Professions Code.*

**Article 5. Advertising**

**§ 1399.250. Advertising.**

A registered dispensing optician may advertise the provision of any ophthalmic goods or services authorized to be provided by such registration in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.  
Reference: Sections 651, 2556 and 17500, Business and Professions Code.*

**§ 1399.251. Advertisement for Eye Examination.**

It is unprofessional conduct for a registered dispensing optician to advertise a price or fee for a visual eye examination or a complete medical eye examination or to otherwise advertise the furnishing of the services of an optometrist or a physician and surgeon.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.  
Reference: Sections 651, 2540, 2556 and 17500, Business and Professions Code.*

**§ 1399.252. Advertising Requirements.**

Registered dispensing opticians shall include the names under which they are registered in all advertising in connection with the business of dispensing optician. For purposes of this ~~chapter~~ division, advertising includes classified directories and solicitations to the public.

*Note: Authority cited: Sections 651 and 2558, Business and Professions Code.  
Reference: Sections 651, 2556 and 2558, Business and Professions Code.*

**Article 6. Fees**

**§ 1399.260. Registered Dispensing Optician Fees.**

- (a) The application fee for a registered dispensing optician registration shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$75 200.00.)
- (~~c~~ ~~b~~) The biennial renewal fee shall be two hundred dollars (\$75 200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2565, Business and Professions Code.*

**§ 1399.261. Contact Lens Dispenser Fees.**

- (a) The application fee for a registered contact lens dispenser shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$75 200.00.)
- (~~c~~ ~~b~~) The biennial renewal fee shall be two hundred dollars (\$75 200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566, Business and Professions Code.*

**~~§ 1399.262. Refund of Application Fee.~~**

~~Any applicant for registration as a contact lens dispenser who does not meet the requirements for registration shall be refunded \$50.00 upon written request.~~

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566, Business and Professions Code.*

**§ 1399.263. Spectacle Lens Dispenser Fees.**

- (a) The application fee for registration shall be one hundred fifty dollars (\$150.00.)
- (b) The initial registration fee shall be two hundred dollars (\$75 200.00.)
- (c) b) The biannual renewal fee shall be two hundred dollars (\$75 200.00.)
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50.00.)

**§1399.264 Non Resident Contact Lens Seller Fees.**

- (a) The application fee for a non-resident contact lens seller shall be one hundred fifty dollars (\$150.00)
- (b) The initial registration fee shall be two hundred dollars (\$200).
- (c) The biannual renewal fee shall be two hundred dollars (\$200).
- (d) The delinquency fee for a biennial renewal shall be fifty dollars (\$50).

*Note: Authority cited: Section 2558, Business and Professions Code. Reference: Section 2566.1 and 2546.9, Business and Professions Code.*

**Article 7. Enforcement**

**§ 1399.270. Substantial Relationship Criteria.**

For the purpose of denial, suspension, or revocation of the registration of a dispensing optician pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a dispensing optician if to a substantial degree it evidences present or potential unfitness of a dispensing optician to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to, those involving the following:

- (a) Any violation of the provisions of Article 6, Chapter 1, Division 2 of the code relating to dispensing opticians.
- (b) Any violation of the provisions of Chapter 5.4, Division 2 of the code.
- (c) Any violation of the provisions of Chapter 5.5, Division 2, of the code.

*Note: Authority cited: Sections 481 and 2558, Business and Professions Code. Reference: Sections 481, 2555.1 and 2556, Business and Professions Code.*

**§ 1399.271. Criteria for Denial and Reinstatement of Registration.**

When considering the denial of a registration under Section 480 of the code, or a petition for reinstatement under Section 11522 of the code, the ~~division~~ Board in

evaluating the rehabilitation of the applicant and his or her present eligibility for registration, shall consider the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (a) or (b).
- (d) In the case of a denial or revocation based upon the conviction of a crime, the criteria set forth in Section 1399.272.
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

*Note: Authority cited: Sections 482 and 2558, Business and Professions Code.  
Reference: Sections 482, 2555.1 and 2556, Business and Professions Code.*

**§ 1399.272. Rehabilitation Criteria for Suspensions and Revocations.**

When considering the suspension or revocation of a registration on the grounds that the registrant has been convicted of a crime, the ~~division~~ Board, in evaluating the rehabilitation of such person and his or her present eligibility for a registration, shall consider the following criteria:

- (a) Nature and severity of the act(s) or offense(s).
- (b) Total criminal record.
- (c) Extent of time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the registrant has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the registrant.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the registrant.

*Note: Authority cited: Sections 482 and 2558, Business and Professions Code.  
Reference: Sections 482, 2555.1 and 2556, Business and Professions Code.*

**§ 1399.274. Definitions.**

As used in Sections 1399.275 through 1399.279, inclusive.

- (a) “Chief of licensing” means the executive officer of the Board, or his or her designee.
- (b) “Optician” means a registered dispensing optician, and a registered spectacle lens dispenser or a registered contact lens dispenser, as applicable.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.  
Reference: Sections 2550 and 2550.1, Business and Professions Code.*

**§ 1399.275. Citations and Fines.**

- (a) The chief of licensing is authorized to issue citations containing orders of abatement and fines for violations by opticians of the provisions of law referred to in this section.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.*

*Reference: Section 125.9, Business and Professions Code.*

**§ 1399.276. Amount of Fines.**

The amount of any fine to be levied by the chief of licensing shall take into consideration the factors listed in subdivision (b) (3) of Section 125.9 of the code and shall be within the range set forth in each subsection below.

(a) The fine for a violation of the following provisions shall be from \$1100 to \$2500:

- (1) Business and Professions Code Section 810;
- (2) Business and Professions Code Section 2542;
- (3) Business and Professions Code Section 2553;
- (4) Business and Professions Code Section 2556.5;
- (5) Business and Professions Code Section 2559.1;
- (6) Business and Professions Code Section 2559.2(e);
- (7) Business and Professions Code Section 2560.

(b) The fine for a violation of the following provisions shall be from \$100 to \$1000:

- (1) Business and Professions Code Section 650;
- (2) Business and Professions Code Section 651;
- (3) Business and Professions Code Section 654;
- (4) Business and Professions Code Section 655;
- (5) Business and Professions Code Section 2540;
- (6) Business and Professions Code Section 2541.3;
- (7) Business and Professions Code Section 2543;
- (8) Business and Professions Code Section 2553.6;
- (9) Business and Professions Code Section 2554;
- (10) Business and Professions Code Section 2556;
- (11) Business and Professions Code Section 2562;
- (12) Business and Professions Code Section 2564.5;
- (13) Title 16 Cal. Code Reg. Section 1399.230;
- (14) Title 16 Cal. Code Reg. Section 1399.231;
- (15) Title 16 Cal. Code Reg. Section 1399.232;
- (16) Title 16 Cal. Code Reg. Section 1399.240;
- (17) Title 16 Cal. Code Reg. Section 1399.242;
- (18) Title 16 Cal. Code Reg. Section 1399.251;
- (19) Title 16 Cal. Code Reg. Section 1399.252.

(c) In her or his discretion, the chief of licensing may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (b).

(d) The sanctions authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.*

**§ 1399.277. Compliance with Orders of Abatement.**

(a) If a cited optician who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the chief of licensing in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the optician cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. Such failure may result in disciplinary action being taken by the ~~division~~ Board or other appropriate judicial relief being taken against the optician cited.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.*

**§ 1399.278. Citations for Unlicensed Practice.**

The chief of licensing is authorized to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which registration as an optician is required under Chapters 5.4 and 5.5 of Division 2 of the Code. Each citation issued shall contain an order of abatement. Where appropriate the chief of licensing shall levy a fine for such unlicensed activity in accordance with subdivision (b) (3) of Section 125.9 of the code. The provisions of Sections 1399.275 and 1399.277 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanctions authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.*

**§ 1399.279. Contest of Citations.**

(a) In addition to requesting a hearing provided for in subdivision (b) (4) of Section 125.9 of the code, the optician cited may, within ten (10) days after service or receipt of the citation, notify the chief of licensing in writing of his or her request for an informal conference with the chief of licensing regarding the acts charged in the citation. The

time allowed for the request shall begin the first day after the citation has been served or received.

(b) The chief of licensing shall hold, within 30 days from the receipt of the request, an informal conference with the optician cited for his or her legal counsel or authorized representative. At the conclusion of the informal conference the chief of licensing may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The chief of licensing shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of Section 1399.277, a copy of his or her findings and decision to the optician cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The optician cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the chief of licensing. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b) (4) of Section 125.9.

*Note: Authority cited: Sections 125.9 and 2558, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.*

## **Article 8. Optical Dispensing Educational Programs (Repealed 1990)**





## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry
<b>FROM</b>	Members, Dispensing Optician Committee (DOC) <i>Prepared by Marc Johnson, Policy Analyst and Natalia Leeper, Licensing Program Coordinator</i>
<b>SUBJECT</b>	Agenda Item #22: Update, Discussion and Possible Action on Changes to Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code (Optician Program Statutes)

**Summary:**

At the [May 15, 2020 Board Meeting](#), the full Board reviewed the proposed changes to the dispensing optician statutes. After discussion of the item, the Board directed the DOC to further review certain sections of the proposal, as well as consider feedback received at the meeting from individual board members and stakeholders. The DOC reviewed the Board’s suggestions at the [June 18, 2020 public meeting](#) and returned with their comments and suggestions, summarized below. Staff requests further review and discussion.

For this proposal to move forward, a legislative author will need to be sought for a bill for these changes in 2021. Bill proposals and justification are due no later than mid-September for the 2021 session. Please note that the text provided by the Board to an author may or may not be accepted and is subject to legislative changes.

**Motion:**

If a motion is desired, the following text may be used:

*“I move to approve the proposed changes presented and discussed here today to the text of Chapters 5.4, 5.45 and 5.5 of the Business and Professions Code, and direct the Executive Officer to pursue legislation in the 2021 legislative session and delegate the authority to the Executive Officer to make any technical, non-substantive changes to the text as needed.”*

**The DOC declined to make changes to the following sections:**

- 2545(b)(1): Dr. Kawaguchi supports raising the limit of the fine to \$50,000, but is concerned about the possible risk of consistency in the application of the fines over the years, and asked if it would make sense to include a base fine and use multipliers based on the number of violations or number of business locations? Staff notes that fine levels can potentially be handled in regulation.
- 2550.1(c): NAOO feels this definition “does not make sense as written...suggest that certain acts will be listed but no such list of acts is included”. NAOO suggests rewording to match 2550(d).

- 2550.1(e): NAOO suggests removal of the terms “registered optician” and “registered dispensing optician” are confusing and recommends the terms be removed from statute and replaced with definitions from subsect. 1-4.
- 2550.1(g): Dr. Kawaguchi does not feel subsections (3) and (4) are needed as it makes the statute more confusing.
- 2559.15: Several stakeholders have expressed concern with the removal of the words “allowing for usual and customary absences”. CAO notes this section has existed for decades and feels no harm has been identified and the removal may harm small optician businesses. Dr. Kawaguchi feels the proposed ratio of three unregistered assistants to one registered spectacle lens dispenser is too high and proposes a ratio of six to one.
- 2559.2(a): Dr. Kawaguchi does not agree with the change from five to three years.
- 2564.70: NAOO opposes the expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses.
- 2564.74(a): A requirement of a president or secretary if a corporation must sign the application form; NAOO suggests a company’s designated signatory instead. Staff rejects this suggestion.
- 2564.74(c): NAOO suggests limiting the advertising requirement to just California. Staff rejects this change.
- 2564.76 (a)(2): Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Current Federal prescription rules as set out are [here](#).
- 2564.80: Similar to 2545(b), Dr. Kawaguchi supports raising the limit of the fine to \$50,000, but is concerned about the possible risk of consistency in the application of the fines over the years, and asked if it would make sense to include a base fine and use multipliers based on the number of violations or number of business locations? Staff notes that fine levels can potentially be handled in regulation.
- Article 3.5: The NAOO recommends that these sections be moved back to the beginning of the optician sections in the 2550 area. They feel this provides needed basic information to applicants and registrants and provide a more logical flow. Legal Counsel had initially reviewed these changes and did not feel the creation of this new article was inappropriate.
- 2568.2: NAOO suggests adding in limited liability companies back into these sections. Staff rejects this change, as the Attorney General’s office has determined that optical companies must be professional corporations, as defined by Corporations Code Section 13401.

**Changes concurred by the DOC:**

- 2550.1(f): Dr. McIntyre feels the use of the word “Plano” creates confusion as a Plano lens does not change the power of the human eye. Staff has moved the reference to plano contact lens to ensure that the language does not imply that plano lenses alter or change the visual powers of the human eye.
- 2550.1(g): Changed to “unregistered optician trainee” in order to remove confusion with unregistered assistants working under Optometrists.
- 2564.74(a): For registration number, NAOO asks which registration number does this refer to and how can the company have a registration number if they are just making an application? Staff proposes adding “if applicable” for clarity. DOC agrees.

- 2564.76(c): Dr. McIntyre feels the text could be misinterpreted to mean that a color of a packaged lens could be altered by a dispenser. Staff recommends the removal of the words “the color or”.

**Additional changes made by the DOC:**

- 2555(u): The DOC changed this proposed section making it unprofessional conduct for a optician failing to refer the patient to a optometrist or physician/surgeon if their prescription has expired.
- 2559.2(a): This section sets out situations in which an applicant may be required to re-take the exam if not engaged in practice in the last three years. Addition of “has maintained their ABO/NCLE or practiced within another state” allows a SLD/CLD to not take the exam. In past DOC discussion, committee members referenced the ABO/NCLE requirements for continuing education every three years. Also referenced were the 18 other states that require opticians to maintain ABO/NCLE certification throughout the use of a state-issued license.
- 2564.5: NAOO opposes this new requirement of hot and cold running water, feeling the cost to be prohibitive and that portable handwashing stations are sufficient under CDC guidelines. After discussion and review of CDC rules, the DOC changed the requirement to “clean” running water.

Commented [JM1]: Rewrite this

**BUSINESS AND PROFESSIONS CODE – DIVISION 2**

**CHAPTER 5.4. Prescription Lenses [2540 - 2545]**

**2540.** No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic devices.  
*(Amended by Stats. 2006, Ch. 148, Sec. 2. Effective January 1, 2007.)*

**2541.** A prescription ophthalmic device includes each of the following:

- (a) Any spectacle or contact lens ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.
- (b) Any contact lens described in paragraph (1) of subdivision (n) of Section 520 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360j and following).
- (c) Any plano contact lens that is marketed or offered for sale in this state. “Plano contact lens” means a zero-power or noncorrective contact lens intended to change the appearance of the normal eye in a decorative fashion.  
*(Amended by Stats. 2006, Ch. 148, Sec. 3. Effective January 1, 2007.)*

**2541.1.** (a) A spectacle lens prescription shall include all of the following:

- (1) The dioptric power of the lens. When the prescription needed by the patient has not changed since the previous examination, the prescriber may write on the prescription form “copy lenses currently worn” instead.
  - (2) The expiration date of the prescription.
  - (3) The date of the issuance of the prescription.
  - (4) The name, address, telephone number, prescriber’s license number, and signature of the prescribing optometrist or physician and surgeon.
  - (5) The name of the person to whom the prescription is issued.
- (b) The expiration date of a spectacle lens prescription shall not be less than two ~~years~~ to and shall not exceed four years from the date of issuance unless the patient’s history or current circumstances establish a reasonable probability of changes in the patient’s vision of sufficient magnitude to necessitate reexamination earlier than two years, or presence or probability of visual abnormalities related to ocular or systemic disease indicates, the need for reexamination of the patient earlier than two years. In no circumstances shall the expiration date be shorter than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber’s certificate to practice.
- (c) The prescriber of a spectacle lens shall orally inform the patient of the expiration date of a spectacle lens prescription at the time the prescription is issued. The expiration date of a prescription may be extended by the prescriber and transmitted by telephone, electronic mail, or any other means of communication. An oral prescription for a spectacle lens shall be reduced to writing and a copy of that writing shall be sent to the prescriber prior to the delivery of the lenses to the person to whom the prescription is issued.

(d) A prescriber of a spectacle lens shall abide by the rules pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission found in Part 456 of Title 16 of the Code of Federal Regulations.

(e) An expired prescription may be filled if all of the following conditions exist:

(1) The patient's spectacles are lost, broken, or damaged to a degree that renders them unusable.

(2) Upon dispensing a prescription pursuant to this subdivision, the person dispensing shall recommend that the patient return to the optometrist or physician and surgeon who issued the prescription for an eye examination and provide the prescriber with a written notification of the prescription that was filled.

*(Added by Stats. 1998, Ch. 8, Sec. 1. Effective January 1, 1999.)*

**2541.2.** (a) (1) The expiration date of a contact lens prescription shall not be less than one year ~~to~~ and shall not exceed two years from the date of issuance, unless the patient's history or current circumstances establish a reasonable probability of changes in the patient's vision of sufficient magnitude to necessitate reexamination earlier than one year, or the presence or probability of visual abnormalities related to ocular or systemic disease indicate the need for reexamination of the patient earlier than one year. If the expiration date of a prescription is less than one year, the health-related reasons for the limitation shall be documented in the patient's medical record. In no circumstances shall the prescription expiration date be less than the period of time recommended by the prescriber for reexamination of the patient.

(2) For the purposes of this subdivision, the date of issuance is the date the patient receives a copy of the prescription.

(3) Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

(b) Upon completion of the eye examination or, if applicable, the contact lens fitting process for a patient as described in subdivision (f), a prescriber or a registered dispensing optician shall provide the patient with a copy of the patient's contact lens prescription signed by the prescriber, unless the prescription meets the standards set forth in subdivision (c).

(c) A prescriber shall retain professional discretion regarding the release of the contact lens prescription for patients who wear the following types of contact lenses:

(1) Rigid gas permeables.

(2) Bitoric gas permeables.

(3) Bifocal gas permeables.

(4) Keratoconus lenses.

(5) Custom designed lenses that are manufactured for an individual patient and are not mass produced.

(d) If a patient places an order with a contact lens seller other than a physician and surgeon, an optometrist, or a registered dispensing optician, the prescriber or his or her authorized agent shall, upon request of the contact lens seller and in the absence of the actual prescription, attempt to promptly confirm the information contained in the prescription through direct communication with the contact lens seller.

(e) The contact lens prescription shall include sufficient information for the complete and accurate filling of a prescription, including, but not limited to, the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and an appropriate expiration date. When a provider prescribes a private label

contact lens for a patient, the prescription shall include the name of the manufacturer, the trade name of the private label brand, and, if applicable, the trade name of the equivalent national brand.

(f) The contact lens fitting process begins after the initial comprehensive eye examination, and includes an evaluation to determine the lens specifications, an initial evaluation of the fit of the lens on the patient's eye, except in the case of a renewal prescription of an established patient, and followup examinations that are medically necessary, and ends when the prescriber or registered dispensing optician determines that an appropriate fit has been achieved, or in the case of a prescription renewal for an established patient, the prescriber determines that there is no change in the prescription.

(g) The payment of professional fees for the eye exam, fitting, and evaluation may be required prior to the release of the prescription, but only if the prescriber would have required immediate payment from the patient had the examination revealed that no ophthalmic goods were required. A prescriber or registered dispensing optician shall not charge the patient any fee as a condition to releasing the prescription to the patient. A prescriber may charge an additional fee for verifying ophthalmic goods dispensed by another seller if the additional fee is imposed at the time the verification is performed.

(h) A prescriber shall not condition the availability of an eye examination, a contact lens fitting, or the release of a contact lens prescription on a requirement that the patient agree to purchase contact lenses from that prescriber. A registered dispensing optician shall not condition the availability of a contact lens fitting on a requirement that the patient agrees to purchase contact lenses from that registered dispensing optician.

(i) A prescriber or a registered dispensing optician shall not place on the contact lens prescription, deliver to the patient, or require a patient to sign a form or notice waiving or disclaiming the liability or responsibility of the prescriber or registered dispensing optician for the accuracy of the ophthalmic goods and services dispensed by another seller. This prohibition against waivers and disclaimers shall not impose liability on a prescriber or registered dispensing optician for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's prescription.

(j) The willful failure or refusal of a prescriber to comply with the provisions of this section shall constitute grounds for professional discipline, including, but not limited to, the imposition of a fine or the suspension or revocation of the prescriber's license. The Medical Board of California and the State Board of Optometry shall adopt regulations, to implement this subdivision, including, but not limited to, standards for processing complaints each receives regarding this subdivision.

(k) For the purposes of this section, "prescriber" means a physician and surgeon or an optometrist.

(l) Nothing in this section shall be construed to expand the scope of practice of a registered dispensing optician as defined in Sections 2542, 2543, and Chapter 5.5 (commencing with Section 2550).

*(Added by Stats. 2002, Ch. 814, Sec. 1. Effective January 1, 2003.)*

**2541.3.** (a) The State Department of Public Health, the State Board of Optometry, and the Medical Board of California shall prepare and adopt quality standards and adopt regulations relating to prescription ophthalmic devices, including, but not limited to, lenses, frames, and contact lenses. In promulgating these rules and regulations, the department and the boards

shall adopt the current standards of the American National Standards Institute regarding ophthalmic materials. Nothing in this section shall prohibit the department and the boards from jointly adopting subsequent standards that are equivalent or more stringent than the current standards of the American National Standards Institute regarding ophthalmic materials.

(b) No individual or group that deals with prescription ophthalmic devices, including, but not limited to, distributors, dispensers, manufacturers, laboratories, optometrists, or ophthalmologists shall sell, dispense, or furnish any prescription ophthalmic device that does not meet the minimum standards set by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California.

(c) Any violation of the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be a misdemeanor.

(d) Any optometrist, ophthalmologist, or dispensing optician who violates the regulations adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California pursuant to this section shall be subject to disciplinary action by his or her licensing board.

(e) The State Board of Optometry or the Medical Board of California may send any prescription ophthalmic device to the State Department of Public Health for testing as to whether or not the device meets established standards adopted pursuant to this section, which testing shall take precedence over any other prescription ophthalmic device testing being conducted by the department. The department may conduct the testing in its own facilities or may contract with any other facility to conduct the testing.

*(Amended by Stats. 2016, Ch. 489, Sec. 10. (SB 1478) Effective January 1, 2017.)*

**2541.6.** No prescription ophthalmic device that does not meet the standards adopted by the State Department of Public Health, the State Board of Optometry, or the Medical Board of California under Section 2541.3 shall be purchased with state funds.

*(Amended by Stats. 2016, Ch. 489, Sec. 11. (SB 1478) Effective January 1, 2017.)*

**2542.** A registered dispensing optician shall ~~fit, adjust, or~~ dispense contact lenses, including plano contact lenses, only on the valid prescription of a physician and surgeon or optometrist, and acting on the advice, direction, and responsibility of the physician and surgeon or optometrist. The optician shall also comply with the requirements of Section 2560. A registered dispensing optician shall not ~~fit a~~ dispense contact lens or lenses, or a plano contact lens or lenses, unless the prescription specifically refers to and authorizes contact lenses. A registered dispensing optician shall not fit a generic type of contact lens or mode of wear for a contact lens contrary to the type or mode, if any, referred to in the prescription.

*(Amended by Stats. 1985, Ch. 1139, Sec. 3.)*

**2543.** (a) Except as provided in the Nonresident ~~Contact Ophthalmic Lens Dispenser Seller~~ Registration Act (Chapter ~~5.45~~ 5.5 (commencing with Section ~~2546~~ 2564.70), the right to dispense, sell or furnish prescription ophthalmic devices at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

(b) It shall be considered a deceptive marketing practice for:

(1) Any licensed physician and surgeon, licensed optometrist, or registered dispensing optician to publish or cause to be published any advertisement or sales presentation relating to contact lenses that represents that contact lenses may be obtained without confirmation of a valid prescription.

(2) Any individual or entity who offers for sale plano contact lenses, as defined in subdivision (c) of Section 2541, to represent by any means that those lenses may be lawfully obtained without an eye examination or confirmation of a valid prescription, or may be dispensed or furnished to a purchaser without complying with the requirements of Section 2562, except as provided in Chapter ~~5.45~~ 5.5 (commencing with Section ~~2546~~ 2564.70).  
(Amended by Stats. 2006, Ch. 148, Sec. 6. Effective January 1, 2007.)

**2544.** (a) Notwithstanding any other provision of law, an assistant in any setting where

supervision of a physician and surgeon or optometrist may fit prescription lenses. Under the direct responsibility and supervision of an ophthalmologist or optometrist, an assistant in any setting where optometry or ophthalmology is practiced may also do the following:

- (1) Prepare patients for examination.
- (2) Collect preliminary patient data, including taking a patient history.
- (3) Perform simple noninvasive testing of visual acuity, pupils, and ocular motility.
- (4) Perform automated visual field testing.
- (5) Perform ophthalmic photography and digital imaging.
- (6) Perform tonometry.
- (7) Perform lensometry.
- (8) Perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist.
- (9) Administer cycloplegiacs, mydriatics, and topical anesthetics that are not controlled substances, for ophthalmic purposes.
- (10) Perform pachymetry, keratometry, A scans, B scans, and electrodiagnostic testing.

(b) For the purposes of this section, “setting” includes, but is not limited to, any facility licensed by the State Department of Public Health or the State Department of Social Services.

(c) Nothing in this section shall be construed to authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400.  
(Amended by Stats. 2010, Ch. 604, Sec. 1. (AB 2683) Effective January 1, 2011.)

**2545.** (a) Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(b) (1) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than two hundred fifty dollars (\$250) one thousand dollars (\$1,000) nor more than two

**Commented [JM1]:** Dr. Kawaguchi is concerned about the possible risk of consistency in application of the fine over the years. He asks if it would make sense to include a base fine and use multipliers based on the number of violations or number of business locations? Staff notes that fine levels can potentially be handled in regulation.

NAOO, in their letter, felt this change was done “in order to be able to hit large businesses” and would strongly oppose this change.

**Commented [JM2R1]:** DOC declined to make any changes to this section.



~~thousand five hundred dollars (\$2,500)~~ **fifty thousand dollars (\$50,000) per violation.** The fines collected pursuant to this section from licensed physicians and surgeons shall be available upon appropriation to the Medical Board of California for the purposes of administration and enforcement. The fines collected pursuant to this section from licensed optometrists and registered dispensing opticians shall be deposited into the Optometry Fund and the Dispensing Opticians Fund, respectively, and shall be available upon appropriation to the State Board of Optometry for the purposes of administration and enforcement.

(2) The Medical Board of California and the State Board of Optometry shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(3) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Amended by Stats. 2016, Ch. 489, Sec. 12. (SB 1478) Effective January 1, 2017.)*

~~**CHAPTER 5.45. Nonresident Contact Lens Sellers [2546 – 2546.10]**~~

**Relocated entire Chapter 5.45 into Chapter 5.5, Article 2.5.**

**CHAPTER 5.5. Registered Dispensing Opticians [2550 - 2569]**

**Article 1. General Provisions [2550 – 2559]**

~~**2550.** Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products, and, as incidental to the filling of those prescriptions, doing any or all of the following acts, either singly or in combination with others, taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames, shall be known as dispensing opticians and shall not engage in that business unless registered with the State Board of Optometry.~~  
*(Amended by Stats. 2016, Ch. 489, Sec. 13. (SB 1478) Effective January 1, 2017.)*

~~**2550.1.** All references in this chapter to the board shall mean the State Board of Optometry. For the purposes of this chapter, the following definitions shall apply:~~

~~(a) "Board" means the State Board of Optometry.~~

~~(b) "Prescription" means any order made by a licensed physician and surgeon or licensed optometrist pursuant to Sections 2541.1 or 2541.2.~~

~~(c) "Fit" and "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others, designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.~~

**Commented [JM3]:** NAOO feels this definition "does not make sense as written...suggest that certain acts will be listed but no such list of acts is included". Suggests rewording to match 2550(d).

**Commented [JM4R3]:** DOC declined to make any changes to this section.

(d) “Adjust” and “adjusting” means doing any or all of the following acts, either singly or in combination with others, adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.

(e) “Dispensing Optician”, “Registered Dispensing Optician” and “Registrant” means any individual, corporation or firm who is registered with the board as follows:

- (1) “Spectacle Lens Dispenser” means any individual who is registered with the board pursuant to Article 1.5 (commencing with Section 2559.1) of this chapter.
- (2) “Contact Lens Dispenser” means any individual who is registered with the board pursuant to Article 2 (commencing with Section 2560) of this chapter.
- (3) “Nonresident Ophthalmic Lens Dispenser” means a business who is registered with the board pursuant to Article 2.5 (commencing with Section 2564.70) which offers, advertises and performs optical services to the general public.
- (4) “Registered Dispensing Ophthalmic Business” means a business who is registered with the board pursuant to Article 3.5 (commencing with Section 2568.1) which offers, advertises and performs optical services to the general public.

(f) “Ophthalmic Lens” or “Ophthalmic Device” means any prescription lenses, spectacles, eyeglasses, contact lens, other ophthalmic devices that alter or change the visual powers of the human eye, or any prescription plano contact lens ordered by a physician and surgeon or optometrist.

(g) “Unregistered Optician Trainee” means an individual who is not registered with the board pursuant to this chapter. The unregistered trainee may perform the following:

- (1) Fitting and adjusting of spectacle lenses under the direct responsibility and supervision of a duly registered spectacle lens dispenser pursuant to section 2559.15.
- (2) Fitting and adjusting of contact lenses under the direct responsibility and supervision of a duly registered contact lens dispenser pursuant to section 2560.
- (3) The selection of frame designs, the actual sales transaction, and the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the dispensing optician.
- (4) Administrative, custodial or office tasks not related to direct patient care.

The provisions of this chapter shall not apply to an individual in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist, pursuant to section 2544 of the business and professions code.

(Amended by Stats. 2016, Ch. 489, Sec. 14. (SB 1478) Effective January 1, 2017.)

**2551.** (a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business prior to being issued a certificate of registration.

(b) Application for that registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a

**Commented [JM5]:** NAOO suggests the terms “registered optician” and “registered dispensing optician” are confusing and recommends the terms be removed from statute and replaced with definitions from subsect. 1-4.

**Commented [JM6R5]:** DOC declined to make any changes to this section.

**Commented [JM57]:** Changed to remove confusion with unregistered assistants working under Optometrists.

**Commented [JM8R7]:** DOC concurs with this change.

**Commented [JM9]:** Dr. Kawaguchi does not feel subsections (3) and (4) are needed as it makes the statute more confusing.

**Commented [JM10R9]:** DOC declined to make changes to this section.

~~corporation or firm, and shall contain specify the name under which he or she, they or it proposes to do business and the business address.~~

~~(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.~~

~~(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.~~

~~(e) Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.~~

~~(Amended by Stats. 1990, Ch. 1190, Sec. 2.)~~

**2552.** (a) Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and direct business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied. Any changes to this information shall be reported in writing to the board within 14 days.

(b) The applicant shall furnish such additional information or proof, oral or written, which the board may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

(c) The board shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified, electronic or registered mail. Within 30 days of the applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified, electronic or registered mail if the board requires additional documents or information.

(d) This section shall become operative on January 1, 1988.

*(Amended by Stats. 2016, Ch. 489, Sec. 15. (SB 1478) Effective January 1, 2017*

**2553.** ~~If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing optician. A separate certificate of registration shall be required for each address where the business is to be conducted.~~

~~A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560).~~

(a) Each certificate shall be at all times displayed in a conspicuous place at the certified place of business. The certificate shall not be transferable, but on application to the board there may be registered a change of address of the certificate. The certificate displayed must include the registration number issued by the board, the applicant's name, address of record and certificate expiration date.

~~2553.1. (a) If a registered dispensing optician business sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:~~

~~(1) The registered dispensing optician business selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days after the change of ownership is completed and shall submit a request for cancellation of registration on a form prescribed by the Board. This registered dispensing optician business shall be responsible for complying with all laws relating to the optical dispensing business until the notice described in paragraph (2) is received by the board.~~

~~(2) The registered dispensing optician business assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. This notice shall be filed with the board no later than 10 calendar days after the change of ownership is completed.~~

~~(3) The registered dispensing optician business assuming ownership of the business shall apply for a new certificate of registration from the board no later than 10 calendar days after the change of ownership is completed.~~

~~(b) This section does not apply to a change of location of business by a registered dispensing optician.~~

2553.5. (a) A registered dispensing optician may fit and adjust spectacle lenses and frames or take facial measurements in any of the following locations:

(1) A health facility as defined in Section 1250 of the Health and Safety Code for a person admitted to that facility or an employee of that facility.

(2) A business location as defined in subdivision (f) for an employee or independent contractor of the person operating the business at that location.

(3) Any certified place of business pursuant to Section ~~2553~~ 2568.1.

(b) A registered dispensing optician who fits and adjusts spectacle lenses at a health facility or business location shall provide to the patient written information disclosing the registrant's regular business address, certificate of registration number, phone number, and the name and phone number of the person designated by the licensee to receive complaints and inquiries, as specified in Section ~~2554~~ 2568.3.

(c) Nothing in this section shall be deemed to permit a registered dispensing optician or registered contact lens dispenser to fit or adjust contact lenses at a health facility or at a business location, as defined in subdivision (f).

(d) A registered spectacle lens dispenser may fit and adjust spectacle lenses at a health facility or at a business location, only if he or she is in personal attendance at a certified place of business pursuant to Section ~~2553~~ 2568.1 at least 40 percent of his or her regular working hours each week.

(e) A registered spectacle lens dispenser who fits and adjusts spectacle lenses at a health facility or at a business location, as defined in subdivision (f), other than on a temporary basis, shall maintain an emergency patient response system. This system shall consist of a telephone answering machine or service or a telephone paging device and the registered spectacle lens dispenser shall respond to patient inquiries received through the emergency system within 24 hours excluding weekends and holidays.

(e)-(f) “Business location” means the place at which any business employs more than 25 persons at any single business address, but shall not include a health facility, as defined in Section 1250 of the Health and Safety Code, or a certified place of business as specified in Section 2553.

(f) ~~(g)~~ This section shall not affect the requirements regarding fitting and adjusting as set forth in Sections 2559.1 and 2560.

*(Amended by Stats. 1993, Ch. 240, Sec. 1. Effective January 1, 1994.)*

**2553.6.** (a) The board shall deny any application for registration under this chapter if any person licensed under Chapter 5 (commencing with Section 2000), for whom the applicant, in accordance with Section 2550, proposes to fill any prescription, has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest in or with the applicant.

(b) The board may, in accordance with Section 2555, suspend, revoke, or refuse to renew the certificate of any individual or firm under this chapter, if such individual or firm, after the effective date of this section, fills, or has filled, while holding a certificate issued pursuant to this chapter, any prescription issued by any person licensed under Chapter 5 (commencing with Section 2000) who has any proprietary interest, or has designated or arranged for any other person to have any proprietary interest, in or with such individual or firm. Such penalties shall be in addition to, and not to the exclusion of, any other remedies or penalties provided by law.

(1) “Proprietary interest,” for the purposes of this section, means any membership, coownership, stock ownership, legal or beneficial interest, any other proprietary interest, or profit-sharing arrangement, designated or arranged or held, directly or indirectly in any form, in or with any individual or firm applying for registration or registered under this chapter, except stock ownership in a corporation which is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through such stock exchange.

(c) This section shall apply only to a dispensing optician required to be registered pursuant to Chapter 5.5 (commencing with Section 2550) and shall not be construed to modify Section 2557, or to affect the fitting of prescription lenses by an assistant pursuant to Section 2544.  
*(Amended by Stats. 2010, Ch. 604, Sec. 2. (AB 2683) Effective January 1, 2011.)*

**2553.7.** Registrations of ~~registrants dispensing opticians, spectacle lens dispensers, and contact lens dispensers~~ shall expire at midnight on the last day of the month in which the license was issued during the second year of a two-year term if not renewed.

*(Added by Stats. 2017, Ch. 564, Sec. 1. (AB 1708) Effective January 1, 2018.)*

**2554.** Each registrant shall conspicuously and prominently display at each registered location the following consumer information:

“Eye doctors are required to provide patients with a copy of their ophthalmic lens prescriptions as follows:

Spectacle prescriptions: Release upon completion of exam.

Contact lens prescriptions: Release upon completion of exam or upon completion of the fitting process. Patients may take their prescription to any eye doctor or registered dispensing optician to be filled.

Optometrists and registered dispensing opticians are regulated by the State Board of Optometry. The State Board of Optometry receives and investigates all consumer complaints involving the practice of optometry and registered dispensing opticians. Complaints involving a California-licensed optometrist or a registered dispensing optician should be directed to:

California State Board of Optometry  
Department of Consumer Affairs  
2450 Del Paso Road, Suite 105  
Sacramento, CA 95834

Phone: 1-866-585-2666 or (916) 575-7170

Email: [optometry@dca.ca.gov](mailto:optometry@dca.ca.gov)

Internet Web site: [www.optometry.ca.gov](http://www.optometry.ca.gov)

*(Amended by Stats. 2016, Ch. 489, Sec. 17. (SB 1478) Effective January 1, 2017.)*

**2555.** Certificates issued hereunder may in the discretion of the board be suspended or revoked or subjected to terms and conditions of probation for violating or attempting to violate this chapter, Chapter 5.4 (commencing with Section 2540) or any regulation adopted under this chapter or, Chapter 5.4 (commencing with Section 2540), or Section 651, 654, or 655, or for incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or by an employee of the registrant. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

The board may take action against any registrant who is charged with unprofessional conduct, and may deny an application for a registration if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

(d) Incompetence.

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of a registered optician.

(f) Any action or conduct that would have warranted the denial of a registration.

(g) The use of advertising relating to optometry that violates Section 651 or 17500.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, registration or permit by another state or territory of the United States, by any other governmental agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(i) Procuring his or her registration by fraud, misrepresentation, or mistake.

- (j) Making or giving any false statement or information in connection with the application for issuance of a license.
- (k) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered dispensing optician, in which event the record of the conviction shall be conclusive evidence thereof.
- (l) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a manner, as to be dangerous or injurious to the person applying for a license or holding a registration under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a license to conduct with safety to the public the practice authorized by the license, or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.
- (m) (1) Committing or soliciting an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of an ~~optometrist~~ optician.

(2) Committing any act of sexual abuse, misconduct, or relations with a patient. The commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a registrant. This paragraph shall not apply to sexual contact between any person licensed under this chapter and his or her spouse or person in an equivalent domestic relationship when that registrant provides optometry treatment to his or her spouse or person in an equivalent domestic relationship.

(3) Conviction of a crime that requires the person to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction described in this paragraph shall be considered a crime substantially related to the qualifications, functions, or duties of a registrant.
- (n) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.
- (o) Performing, or holding oneself out as being able to perform, or offering to perform, any professional services beyond the scope of the license authorized by this chapter.
- (p) The practice of functions defined in this chapter without a valid, unrevoked, unexpired registration.
- (q) The employing, directly or indirectly, of any suspended or unregistered optician to perform any work for which an optician registration is required.
- (r) Permitting another person to use the registration for any purpose.
- (s) Altering with fraudulent intent a registration issued by the board, or using a fraudulently altered license, permit certification or any registration issued by the board.
- (t) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from optician to patient, from patient to patient, or from patient to optician. In administering this subdivision, the board shall consider the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the

Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings.

(u) Failure to refer a patient to an appropriate optometrist or physician and surgeon if the patient does not hold a current and unexpired prescription.

**2555.1.** (a) In the discretion of the board, a certificate issued hereunder may be suspended or revoked if an individual certificate holder or persons having any proprietary interest who will engage in dispensing operations, have been convicted of a crime substantially related to the qualifications, functions and duties of a dispensing optician. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a dispensing optician is deemed to be a conviction within the meaning of this article. The board may order the certificate suspended or revoked, or may decline to issue a certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(c) The proceeding under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. This section shall become operative on January 1, 1988.

(d) This section shall only apply to individuals included on the registration on file with the board and shall not include stockholders or unaffiliated employees. For the purposes of this section, the term “unaffiliated employees” means a person or persons who do not perform the functions of fitting and adjusting of spectacle lenses performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses performed in compliance with Article 2 (commencing with Section 2560).

*(Amended by Stats. 2016, Ch. 489, Sec. 19. (SB 1478) Effective January 1, 2017.)*

**2556.** (a) Except as authorized by Section 655, it is unlawful for a registered dispensing optician or a person who engages in the business of, or holds himself or herself out to be, a dispensing optician to do any of the following: to advertise the furnishing of, or to furnish, the services of an optometrist or a physician and surgeon, to directly employ an optometrist or physician and surgeon for the purpose of any examination or treatment of the eyes, or to duplicate or change lenses without a prescription or order from a person duly licensed to issue the same. For the purposes of this section, “furnish” does not mean to enter into a landlord-tenant relationship of any kind.

(b) Notwithstanding Section 125.9, the board may, by regulation, impose and issue administrative fines and citations for a violation of this section or Section 655, which may be assessed in addition to any other applicable fines, citations, or administrative or criminal actions.

*(Amended by Stats. 2018, Ch. 703, Sec. 22. (SB 1491) Effective January 1, 2019.)*

**Commented [JM11]:** NAOO feels this proposed section would be posing an “unmeetable” standard on an optician; COA recommends “observation” in place of “examination”.

**Commented [JM12R11]:** DOC: Replace with “obtain current and unexpired prescriptions”



**2556.1.** All licensed optometrists and registered dispensing opticians who are in a colocated setting shall report the business relationship to the State Board of Optometry, as determined by the board. The State Board of Optometry shall have the authority to inspect any premises at which the business of a registered dispensing optician is colocated with the practice of an optometrist, for the purposes of determining compliance with Section 655. The inspection may include the review of any written lease agreement between the registered dispensing optician and the optometrist or between the optometrist and the health plan. Failure to comply with the inspection or any request for information by the board may subject the party to disciplinary action. The board shall provide a copy of its inspection results, if applicable, to the Department of Managed Health Care.

*(Amended by Stats. 2016, Ch. 31, Sec. 2. (SB 836) Effective June 27, 2016.)*

**2556.2.** (a) Notwithstanding any other law, subsequent to the effective date of this section and until January 1, 2019, any individual, corporation, or firm operating as a registered dispensing optician under this chapter before the effective date of this section, or an employee of such an entity, shall not be subject to any action for engaging in conduct prohibited by Section 2556 or Section 655 as those sections existed prior to the effective date of this bill, except that a registrant shall be subject to discipline for duplicating or changing lenses without a prescription or order from a person duly licensed to issue the same.

(b) Nothing in this section shall be construed to imply or suggest that a person registered under this chapter is in violation of or in compliance with the law.

(c) This section shall not apply to any business relationships prohibited by Section 2556 commencing registration or operations on or after the effective date of this section.

(d) Subsequent to the effective date of this section and until January 1, 2019, nothing in this section shall prohibit an individual, corporation, or firm operating as a registered dispensing optician from engaging in a business relationship with an optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) before the effective date of this section at locations registered with the Medical Board of California before the effective date of this section.

(e) This section does not apply to any administrative action pending, litigation pending, cause for discipline, or cause of action accruing prior to September 1, 2015.

(f) Any registered dispensing optician or optical company that owns a health plan that employs optometrists, subject to this section, shall comply with the following milestones:

(1) By January 1, 2017, 15 percent of its locations shall no longer employ an optometrist.

(2) By August 1, 2017, 45 percent of its locations shall no longer employ an optometrist.

(3) By January 1, 2019, 100 percent of its locations shall no longer employ an optometrist.

(g) Any registered dispensing optician or optical company that owns a health plan that employs optometrists shall report to the State Board of Optometry in writing as to whether it has met each of the milestones in subdivision (f) within 30 days of each milestone. The State Board of Optometry shall provide those reports as soon as it receives them to the director and the Legislature. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) (1) Notwithstanding any other law and in addition to any action available to the State Board of Optometry, the State Board of Optometry may issue a citation containing an order of abatement, an order to pay an administrative fine, or both, to an optical company, an optometrist, or a registered dispensing optician for a violation of this section. The

administrative fine shall not exceed fifty thousand dollars (\$50,000). In assessing the amount of the fine, the board shall give due consideration to all of the following:

- (A) The gravity of the violation.
  - (B) The good faith of the cited person or entity.
  - (C) The history of previous violations of the same or similar nature.
  - (D) Evidence that the violation was or was not willful.
  - (E) The extent to which the cited person or entity has cooperated with the board's investigation.
  - (F) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
  - (G) Any other factors as justice may require.
- (2) A citation or fine assessment issued pursuant to a citation shall inform the cited person or entity that if a hearing is desired to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (3) The board shall adopt regulations to implement a system for the issuance of citations, administrative fines, and orders of abatement authorized by this section. The regulations shall include provisions for both of the following:
- (A) The issuance of a citation without an administrative fine.
  - (B) The opportunity for a cited person or entity to have an informal conference with the executive officer of the board in addition to the hearing described in paragraph (2).
- (4) The failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.
- (5) Notwithstanding any other law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.
- (i) Administrative fines collected pursuant to this section shall be deposited in the Dispensing Opticians Fund. It is the intent of the Legislature that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.
- (Amended by Stats. 2016, Ch. 31, Sec. 3. (SB 836) Effective June 27, 2016.)*

**2556.5.** Any person who holds himself out as a “dispensing optician” or “registered dispensing optician” or who uses any other term or letters indicating or implying that he is registered and holds a certificate under the terms of this law without having at the time of so doing a valid, unrevoked certificate, as provided in this chapter, is guilty of a misdemeanor.

*(Added by Stats. 1953, Ch. 1144.)*

**2557.** This chapter shall not affect any person licensed as an optometrist under Chapter 7 of Division II of this code, or any physician and surgeon licensed under Chapter 5 of Division II of this code. Such exemption shall not apply to any optometrist or physician and surgeon

exclusively engaged in the business of filling prescriptions for physicians and surgeons. This chapter does not prohibit the sale of goggles, sun glasses, colored glasses, or occupational protective eye devices if they do not have refractive values nor do the provisions of this chapter prohibit the sale of complete ready-to-wear eyeglasses as merchandise.  
(Added by Stats. 1939, Ch. 955.)

**2557.1. (relocated from 2563)** A certificate issued to a registered spectacle lens or contact lens dispenser may in the discretion of the board be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

**2558.** Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than 10 days nor more than one year, or by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) or by both such fine and imprisonment.

The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act, any regulations as are reasonably necessary to carry out this chapter.

(Amended by Stats. 2016, Ch. 489, Sec. 20. (SB 1478) Effective January 1, 2017.)

**2558.1 (relocated from 2559.6)** No spectacle lens or contact lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (e) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.

**2559.** Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of any provision of this chapter, or Chapter 5.4 (commencing with Section 2540), the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of the board, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Amended by Stats. 2016, Ch. 489, Sec. 21. (SB 1478) Effective January 1, 2017.)

## Article 1.5. Spectacle Lens Dispensing [2559.1 – 2559.6]

**2559.15.** On and after January 1, 1988, no individual may fit and adjust spectacle lenses unless the registration requirement of Section 2550 is complied with, and unless (1) the individual is a duly registered spectacle lens dispenser as provided in Section 2559.2 or (2) the individual unregistered trainee performs the fitting and adjusting under the direct responsibility and supervision of a duly registered spectacle lens dispenser whose certificate of registration is then conspicuously and prominently displayed on the premises. A supervising registered dispenser shall be physically present on the registered premises when an unregistered

~~absences including illness and vacation, and shall not supervise more than three unregistered trainees at a time.~~

*(Added by Stats. 1986, Ch. 773, Sec. 12. Section operative January 1, 1988, pursuant to Section 2559.5.)*

**2559.2.** (a) An individual shall apply for registration as a registered spectacle lens dispenser on forms prescribed by the board. The board shall register an individual as a registered spectacle lens dispenser upon satisfactory proof that the individual has passed the registry examination of the American Board of Opticianry or any successor agency to that board. In the event the board should determine, after hearing, that the registry examination is not appropriate to determine entry level competence as a spectacle lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter prescribe or administer a written examination that meets those specifications. If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting spectacle lenses, has maintained their ABO/NCLE or practiced within another state, within the last five three years then the board may require the applicant to take and pass the examination referred to in this section as a condition of registration. Any examination prescribed or administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract for administration of an examination.

(b) The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(c) The board shall issue a certificate to each qualified individual stating that the individual is a registered spectacle lens dispenser.

(d) Any individual who had been approved as a manager of dispensing operations of a registered dispensing optician under the provisions of Section 2552 as it existed before January 1, 1988, and who had not been subject to any disciplinary action under the provisions of Section 2555.2 shall be exempt from the examination requirement set forth in this section and shall be issued a certificate as a registered spectacle lens dispenser, provided an application for that certificate is filed with the board on or before December 31, 1989.

(e) A registered spectacle lens dispenser is authorized to fit and adjust spectacle lenses at any place of business holding a certificate of registration under Section 2553, or within any location where the practice of ophthalmology or optometry is practiced. The certificate of the registered spectacle lens dispenser is must be displayed in a conspicuous place at the place of business where he or she is fitting and adjusting. The registered spectacle lens dispenser must report this location to the board within 14 days of its display of the certificate.

**Commented [JM13]:** Update to same as definitions “unregistered optical trainee”

**Commented [JM14]:** Several stakeholders have expressed concern with this removal. CAOO notes this section has existed for decades and feels no harm has been identified.

**Commented [JM15]:** Dr. Kawaguchi feels the 3:1 ratio is unnecessary and suggests 6:1. CAOO also opposes this change.

**Commented [JM16R15]:** DOC declined to make any changes to this section.

**Commented [JM17]:** In past DOC discussion, committee members referenced the ABO/NCLE requirements for continuing education every three years. Also referenced were the 18 other states that require opticians to maintain ABO/NCLE certification throughout the use of a state-issued license.

**Commented [JM18R17]:** Added by DOC

**Commented [JM19]:** Dr. Kawaguchi disagrees with this change. NAOO also opposes, feeling that the change is being made without evidence of need.

**Commented [JM20R19]:** DOC declined to make any changes to this section.

*(Amended by Stats. 2016, Ch. 489, Sec. 22. (SB 1478) Effective January 1, 2017.)*

**2559.3.** A certificate issued to a registered spectacle lens dispenser may, in the discretion of the board, be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.

Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

*(Amended by Stats. 2016, Ch. 489, Sec. 23. (SB 1478) Effective January 1, 2017.)*

**2559.4.** This article shall not apply to an assistant fitting spectacle lenses pursuant to Section 2544 if the assistant is acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting spectacle lenses for his or her patients.

*(Amended by Stats. 2010, Ch. 604, Sec. 3. (AB 2683) Effective January 1, 2011.)*

**2559.5.** This article shall become operative on January 1, 1988. However, the board may, prior to that date, accept and process applications, including the collection of fees, and perform other functions necessary to implement this article.

~~**2559.6.** No spectacle lens prescription that is issued on or after January 1, 1999, shall be dispensed unless the prescription meets the requirements of Section 2541.1. No spectacle lens prescription shall be dispensed after the expiration date of the prescription unless authorized pursuant to subdivision (c) of Section 2541.1. A person violating this section shall not be guilty of a misdemeanor pursuant to Section 2558. A violation of this section shall be considered unprofessional conduct by the board that issued the dispenser's certificate to practice. A registered dispensing optician may defend this proceeding by establishing that the expiration date of the prescription was not established consistent with Section 2541.1. Nothing in this section shall be construed to authorize a registered dispensing optician to fill a prescription after the expiration date or to make any judgment regarding the appropriateness of the expiration date.~~

## **ARTICLE 2. Contact Lens Dispensing [2560 - 2564.6]**

**2560.** No individual may fit and adjust contact lenses, including plano contact lenses, unless the registration requirement of Section 2550 is complied with, and unless (a) the individual is a duly registered contact lens dispenser as provided in Section 2561 or (b) ~~the individual an~~ unregistered trainee performs the fitting and adjusting under the direct responsibility and supervision of a duly registered contact lens dispenser who is then physically present on the registered premises. In no event shall a registered contact lens dispenser supervise more than three contact lens dispenser ~~trainees~~ unregistered trainee.

*(Amended by Stats. 1994, Ch. 26, Sec. 44. Effective March 30, 1994.)*

**2561.** (a) An individual shall apply for registration as a registered contact lens dispenser on forms prescribed by the board.

(b) The board shall register an individual as a registered contact lens dispenser upon satisfactory proof that the individual has passed the contact lens registry examination of the National Committee of Contact Lens Examiners or any successor agency to that committee. In the event the board should ever find after hearing that the registry examination is not appropriate to determine entry level competence as a contact lens dispenser or is not designed to measure specific job performance requirements, the board may thereafter from time to time prescribe or administer a written examination that meets those specifications.

(c) If an applicant for renewal has not engaged in the full-time or substantial part-time practice of fitting and adjusting contact lenses within the last five years then the board may require the applicant to take and pass the examination referred to in this section as a condition of registration.

(d) Any examination administered by the board shall be given at least twice each year on dates publicly announced at least 90 days before the examination dates. The board is authorized to contract with the National Committee of Contact Lens Examiners or any successor agency to that committee to provide that the registry examination is given at least twice each year on dates publicly announced at least 90 days before the examination dates.

(e) The board may deny registration where there are grounds for denial under the provisions of Division 1.5 (commencing with Section 475).

(f) The board shall issue a certificate to each qualified individual stating that the individual is a registered contact lens dispenser. A registered contact lens dispenser may use that designation, but shall not hold himself or herself out in advertisements or otherwise as a specialist in fitting and adjusting contact lenses.

*(Amended by Stats. 2016, Ch. 489, Sec. 25. (SB 1478) Effective January 1, 2017.)*

**2562.** Upon satisfactory completion of the fitting of contact lenses, but in no event more than 60 days after receipt of the prescription, a registered contact lens dispenser shall direct the person named in the prescription to return to the prescribing physician and surgeon or optometrist for an evaluation.

*(Added by Stats. 1982, Ch. 418, Sec. 8.)*

~~**2563.** A certificate issued to a registered contact lens dispenser may in the discretion of the board be suspended or revoked for violating or attempting to violate any provision of this chapter or any regulation adopted under this chapter, or for incompetence, gross negligence, or repeated similar negligent acts performed by the certificate holder. A certificate may also be suspended or revoked if the individual certificate holder has been convicted of a felony as provided in Section 2555.1.~~

~~Any proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.~~

**2564.** The provisions of this article shall not apply to an assistant fitting contact lenses while acting under the direct responsibility and supervision of a physician and surgeon or optometrist who engages in the practice of fitting contact lenses for his or her patients under Section 2544.

*(Amended by Stats. 2010, Ch. 604, Sec. 4. (AB 2683) Effective January 1, 2011.)*

**2564.5.** A registered dispensing optician fitting contact lenses shall maintain accessible handwashing facilities on the premises and those facilities shall be used before each fitting of contact lenses. **For the purposes of this section, “accessible handwashing facilities” means a clean and sanitary sink with hot and cold clean running water, disinfectant soap, and adequate drying devices such as a towel or electric hand dryer, which is physically separate from a lavatory or bathroom and is accessible to all relevant persons.**

*(Added by Stats. 1982, Ch. 418, Sec. 8.)*

**Commented [JM21]:** NAOO opposes this new requirement, feeling the cost to be prohibitive. They note the CDC guidelines only cold water is sufficient.

**Commented [JM22R21]:** Strike “hot and cold”

**2564.6.** A registered dispensing optician shall comply with the applicable provisions of Section 2541.2.

### Article 2.5. Nonresident Ophthalmic Lens Dispensers

**Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel**

**2564.70. (relocated from 2546)** This act may be cited as the “~~Nonresident Contact Ophthalmic Lens Dispenser Registration Act.~~”

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**Commented [JM23]:** NAOO opposes expansion of online contact lens seller registration to include online sellers of any prescription optical devices, including eyeglasses. They ask where the demonstrated need for expansion into eyeglasses and note only one other state has imposed such a requirement.

**Commented [JM24R23]:** The DOC declined to make changes.

**2564.71. (relocated from 2546.1)** (a) On and after January 1, 1997, no person located outside California shall ship, mail, furnish or deliver in any manner, contact lenses at retail to a patient at a California address unless registered with the ~~Division of Licensing of the Medical Board of California.~~ State Board of Optometry.

(b) With regard to any person subject to registration pursuant to this section, only replacement contact lenses provided pursuant to a valid prescription as described in Section ~~2546.6~~ 2564.76 may be shipped, mailed, or delivered directly to a patient.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.72 (Relocated from 2546.2)** All references in this chapter to the division shall mean the State Board of Optometry.

**2564.73. (relocated from 2546.3)** The ~~division~~ State Board of Optometry may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**Commented [JM25]:** NAOO suggests it be the company’s designated signatory as opposed to these specific officers. Staff rejects this suggestion.

**Commented [JM26R25]:** The DOC declined to make changes to this section.

**2564.74. (relocated from 2546.4)** (a) Application for registration as a nonresident ~~contact ophthalmic lens dispenser seller~~ shall be made on forms prescribed by the State Board of Optometry, accompanied by the fee prescribed by this chapter, and shall bear the signature of the individual, or individuals if a co-partnership, **or the president or secretary if a corporation,** and shall contain the name or fictitious or assumed name, if applicable, under which the person proposes to do business, location of the business, registration number as issued by the board if applicable and the designation of an agent for service of process in California.

**Commented [JM27]:** NAOO asked what registration # does this refer to? How can the company have a registration # if they are just making application? Staff proposes adding “if applicable” for clarity.

**Commented [JM28R27]:** DOC concurs with this change.

(b) The board shall be notified in writing within 30 days of any change of name, fictitious or assumed name, location of business, corporate officer, or agent of service.

(c) Advertising, including but not limited to U.S. Mail, websites, electronic communications such as email, facsimile transmissions, directories, and newspaper and magazine ads must contain the following:

(1) The registration number issued by the board, along with text identifying the registration number as being issued by the board.

(2) Any other information the board deems necessary.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.75. (relocated from 2546.5)** In order to obtain and maintain registration, a nonresident ~~contact ophthalmic lens dispenser~~ seller shall:

(a) Be in good standing and either registered or otherwise authorized in the state or jurisdiction in which the selling facility is located and from which the contact lenses are sold.

(b) Comply with all directions and requests for information made by the board as authorized under this chapter.

(c) Maintain records of ~~contact ophthalmic~~ lenses shipped, mailed, furnished or delivered to patients in California for a period of at least three years.

(d) Provide a toll-free telephone service for responding to patient questions and complaints during the applicant's regular hours of operation, but in no event less than six days per week and 40 hours per week. The toll-free number shall be included in literature provided with each mailed ~~contact ophthalmic~~ lens prescription. All questions relating to eye care for the lens prescribed shall be referred back to the ~~contact ophthalmic~~ lens prescriber.

(e) Provide the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN.

(f) Disclose in any price advertisement any required membership fees, enrollment fees, and indicate that shipping costs may apply unless the advertisement specifically and clearly states otherwise.

(g) Provide a toll-free telephone number, facsimile line, and electronic mail address that are dedicated to prescribers and their authorized agents for the purposes of confirmation of ~~contact ophthalmic~~ lens prescriptions. These numbers, along with an electronic mail address, shall be included in any communication with the prescriber when requesting confirmation of a contact lens prescription.

(h) It shall be considered a deceptive marketing practice for any nonresident ~~contact ophthalmic lens dispenser~~ seller to publish or cause to be published any advertisement or sales presentation relating to ~~contact ophthalmic~~ lenses representing that ~~contact ophthalmic~~ lenses may be obtained without confirmation of a valid prescription.

*(Amended by Stats. 2002, Ch. 814, Sec. 4. Effective January 1, 2003.)*

**2564.76 (relocated from 2546.6)** (a) ~~contact Ophthalmic~~ lenses may be sold only upon receipt of a written prescription or a copy of a written prescription and may be sold in quantities

**Commented [JM29]:** NAOO suggest limiting this requirement to California. Staff requests further DOC discussion on this comment.

**Commented [JM30R29]:** The DOC declined to make changes to this section.



consistent with the prescription's established expiration date and the standard packaging of the manufacturer or vendor. If the written prescription or a copy of it is not available to the ~~dispenser-seller~~, the ~~dispenser-seller~~ shall confirm the prescription by direct communication with the prescriber or his or her authorized agent prior to selling, shipping, mailing, or delivering any lens, and maintain a record of the communication. A prescription shall be deemed confirmed upon the occurrence of one of the following:

(1) The prescriber or the prescriber's agent confirms the prescription by communication with the ~~dispenser-seller~~.

(2) The prescriber fails to communicate with the ~~dispenser-seller~~ by 2 p.m. of the next business day within eight (8) business hours after the ~~dispenser-seller~~ requests confirmation, or the prescriber fails to communicate with the ~~dispenser-seller~~ by the next business day on or before the same time of day that the seller requested confirmation, whichever is sooner. For purposes of this paragraph, "business day" means each day except a Sunday or a federal holiday.

(b) If a prescriber communicates with a ~~dispenser-seller~~ before the time period described in paragraph (2) of subdivision (a) elapses and informs the ~~dispenser-seller~~ that the contact lens prescription is invalid, the ~~dispenser-seller~~ shall not fill the prescription. The prescriber shall specify in the communication with the ~~dispenser-seller~~ the basis for invalidating the prescription.

(c) A ~~dispenser-seller~~ shall not alter any of the specifications of a ~~contact ophthalmic lens~~ prescription other than the color or to substitute a different manufacturer, brand, or other physical property of the lens.

(d) Notwithstanding the provisions of this section, if the contact lens is manufactured by a company, but sold under multiple private labels by that same company to individual providers, the ~~dispenser-seller~~ may fill the prescription with a contact lens manufactured by that company if the contact lens prescription and the related parameters are not substituted, changed, or altered for a different manufacturer or brand.

*(Amended by Stats. 2002, Ch. 814, Sec. 5. Effective January 1, 2003.)*

**2564.77. (relocated from 2546.7)** (a) A certificate may be denied, suspended, revoked, or otherwise subjected to discipline for any of the following:

- (1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.
- (2) An act of dishonesty or fraud.
- (3) Committing any act or being convicted of a crime constituting grounds for denial of licensure or registration under Section 480.
- (4) Any violation of Section 2546.5 or 2546.6.

(b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the division shall have all powers granted therein.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.78 (relocated from 2546.8)** Every registration issued to a nonresident ~~contact ophthalmic lens dispenser-seller~~ shall expire 24 months after the initial date of issuance. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the division, and pay the renewal fee prescribed by this chapter.

**Commented [JM31]:** Dr. Kawaguchi feels federal laws may be too lenient and create a loophole. Current Federal prescription rules as set out [here](#)

**Commented [JM32R31]:** The DOC declined to make changes to this section.

**Commented [JM33]:** Dr. McIntyre feels the text could be misinterpreted to mean that a color of a packaged lens could be altered by a dispenser. Staff recommends the removal of this text.

**Commented [JM34R33]:** DOC agrees with this change.

*(Added by Stats. 1995, Ch. 853, Sec. 1. Effective January 1, 1996.)*

**2564.79 (relocated from 2546.9)** The amount of fees prescribed in connection with the registration of nonresident ophthalmic lens dispenser-seller is that established by the following schedule:

- (a) The application fee for a nonresident contact ophthalmic lens dispenser-seller shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed registration shall be twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.
- (g) The fees collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter.

*(Repealed and added by Stats. 2016, Ch. 799, Sec. 5. (SB 1039) Effective January 1, 2017.)*

**2564.80. (relocated from 2546.10)** (a) Any person who violates any of the provisions of this chapter shall be subject to a fine of not less than one thousand dollars (\$1,000) nor more than ~~two thousand five hundred dollars (\$2,500)~~ **fifty thousand dollars (\$50,000)** per violation. The fines collected pursuant to this section shall be available upon appropriation to the ~~Medical Board of California~~ **State Board of Optometry** for the purposes of administration and enforcement.

(b) ~~Medical Board of California~~ The State Board of Optometry shall adopt regulations implementing this section and shall consider the following factors, including, but not limited to, applicable enforcement penalties, prior conduct, gravity of the offense, and the manner in which complaints will be processed.

(c) The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

*(Added by Stats. 2002, Ch. 814, Sec. 6. Effective January 1, 2003.)*

### **ARTICLE 3. Fiscal Provisions [2565 - 2568]**

**2565.** The amount of fees prescribed in connection with the registration of dispensing ophthalmic businesses shall be as set forth in this section.

- (a) The application fee for registration shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).

**Commented [JM35]:** Same concern as set out in 2545(b)

**Commented [JM36R35]:** The DOC declined to make changes to this section.

- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed certificate shall be twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.  
*(Repealed and added by Stats. 2016, Ch. 799, Sec. 7. (SB 1039) Effective January 1, 2017.)*

**2566.** The amount of fees prescribed in connection with certificates for contact lens dispensers is as follows:

- (a) The application fee for a registered contact lens dispenser shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The biennial fee for the renewal of certificates shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The division may by regulation provide for a refund of a portion of the application fee to applicants who do not meet the requirements for registration.
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.
- (g) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).  
*(Repealed and added by Stats. 2016, Ch. 799, Sec. 9. (SB 1039) Effective January 1, 2017.)*

**2566.1.** The amount of fees prescribed in connection with certificates for spectacle lens dispensers shall be as set forth in this section:

- (a) The application for registration fee shall be a minimum of one hundred fifty dollars (\$150) and shall not exceed two hundred dollars (\$200).
- (b) The initial registration fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (c) The renewal fee shall be a minimum of two hundred dollars (\$200) and shall not exceed three hundred dollars (\$300).
- (d) The delinquency fee shall be a minimum of fifty dollars (\$50) and shall not exceed seventy-five dollars (\$75).
- (e) The fee for replacement of a lost, stolen, or destroyed certificate is twenty-five dollars (\$25).
- (f) The State Board of Optometry may periodically revise and fix by regulation the fees specified in subdivisions (a), (b), (c), and (d), and these revised fees shall not exceed the reasonable regulatory cost.  
*(Repealed and added by Stats. 2016, Ch. 799, Sec. 11. (SB 1039) Effective January 1, 2017.)*

**2566.2.** Every registration issued to a dispensing ophthalmic business, contact lens dispenser, renewal. To renew an unexpired registration, the registrant shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the board, and pay the renewal fee prescribed by this chapter.

*Added by Stats. 2017, Ch. 775, Sec. 102. (SB 798) Effective January 1, 2018.)*

**2567.** (a) The provisions of Article 19 (commencing with Section 2420) and Article 20

chapter apply to the issuance and govern the expiration and renewal of certificates issued under this chapter. All fees collected from persons registered or seeking registration under this chapter shall be paid into the Dispensing Opticians Fund, and shall be available, upon appropriation, to the State Board of Optometry for the purposes of this chapter. Any moneys within the Contingent Fund of the Medical Board of California collected pursuant to this chapter shall be deposited in the Dispensing Opticians Fund.

(b) The board may employ, subject to civil service regulations, whatever additional clerical assistance is necessary for the administration of this chapter.

*Amended by Stats. 2015, Ch. 405, Sec. 10. (AB 684) Effective January 1, 2016.)*

**2568.** The board shall report to the Controller at the beginning of each month for the month

shall pay the entire amount thereof to the Treasurer for deposit in the Dispensing Opticians Fund, which fund is created to carry out the provisions of this chapter.

*(Amended by Stats. 2005, Ch. 74, Sec. 6. Effective July 19, 2005.)*

**ARTICLE 3.5. Registered Dispensing Ophthalmic Businesses [2568.1 – 2568.5]**  
(New article; contains various relocated sections)

**Placeholder section numbers listed; new section numbers to be determined by Legislative Counsel.**

**2568.1 (relocated from 2550).** Individuals, corporations, and firms engaged in the business of filling prescriptions of physicians and surgeons licensed by the Medical Board of California or optometrists licensed by the State Board of Optometry for prescription lenses and kindred products shall be known as dispensing ophthalmic businesses and shall not engage in that business unless registered with the State Board of Optometry.

**2568.2. (relocated from 2551)** (a) Individuals, corporations, and firms shall make application for registration and shall not engage in that business defined in Section 2550 or 2550.1 prior to being issued a certificate of registration.

(b) Application for that registration shall be on forms prescribed by the board, shall bear the signature of the individual, or general partners if a partnership, or the president or secretary if a corporation or firm, and shall contain specify the name under which he or she, they or it proposes to do business and the business address.

**Commented [JM37]:** The NAOO recommends that these sections be moved back to the beginning of the optician sections in the 2550 area. They feel this provide needed basic information to applicants and registrants and provide a more logical flow. Legal Counsel had initially reviewed this change and did not feel the creation of this new article was inappropriate.

**Commented [JM38R37]:** No change

(c) Corporations and firms shall be organized and exist pursuant to the general corporation law and shall be a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.

(d) If applicable, the application shall include a list of officers in the corporation, firm or partnership and a copy of the articles of incorporation as submitted to the Secretary of State.

(e) Separate applications shall be made for each place of business and each application must be accompanied by the application fee prescribed by Section 2565.

*(Amended by Stats. 1990, Ch. 1190, Sec. 2.)*

**2568.3 (relocated from 2552)** (a) Each application shall be verified under oath by the person required to sign the application and shall designate the name, address, and direct business telephone number of the applicant's employee who will be responsible for handling customer inquiries and complaints with respect to the business address for which registration is applied. Any changes to this information shall be reported in writing to the board within 14 days.

(b) The applicant shall furnish such additional information or proof, oral or written, which the board may request, including information and proof relating to the provisions of Division 1.5 (commencing with Section 475).

(c) The board shall promptly notify any applicant if, as of the 30th day following the submission of an application under this chapter, the application and supporting documentation are not substantially complete and in proper form. The notification shall be in writing, shall state specifically what documents or other information are to be supplied by the applicant to the board, and shall be sent to the applicant by certified, electronic or registered mail. Within 30 days of the applicant's submission of the requested documents or information to the board, the board shall notify the applicant by certified, electronic or registered mail if the board requires additional documents or information.

(d) This section shall become operative on January 1, 1988.

*(Amended by Stats. 2016, Ch. 489, Sec. 15. (SB 1478) Effective January 1, 2017.)*

**2568.4 (relocated from 2553)**

If the board, after investigation, approves the application, it shall register the applicant and issue to the applicant a certificate of dispensing ophthalmic business. A separate certificate of registration shall be required for each address where the business is to be conducted.

A certificate authorizes the applicant, its agents and employees acting therefor to engage in the business defined in Section 2550 or 2550.1 provided that the fitting and adjusting of spectacle lenses is performed in compliance with Article 1.5 (commencing with Section 2559.1) and the fitting and adjusting of contact lenses is performed in compliance with Article 2 (commencing with Section 2560). Only individuals registered with the board pursuant to those sections shall perform those supervisory functions.

**2568.5 (relocated from 2553.1):** (a) If a registered dispensing optician ophthalmic business sells or transfers ownership of his or her place of business, both of the following requirements shall be satisfied:

(1) The registered dispensing optician ophthalmic business selling or transferring ownership of the business shall return the certificate of registration to the board no later than 10 calendar days after the change of ownership is completed and shall submit a request for cancellation of

**Commented [JM39]:** NAOO suggests adding in limited liability companies back into these sections. Staff rejects this change, as the Attorney General's office has determined that optical companies must be professional corporations, as defined by Corporations Code Section 13401.

**Commented [JM40R39]:** The DOC declined to make changes to this section.

registration on a form prescribed by the Board. This registered dispensing ~~optician~~ ophthalmic business shall be responsible for complying with all laws relating to the ~~optician~~ ophthalmic dispensing business until the notice described in paragraph (2) is received by the board.

(2) The registered dispensing ~~optician~~ ophthalmic business assuming ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. This notice shall be filed with the board no later than 10 calendar days after the change of ownership is completed.

(3) The registered dispensing ~~optician~~ ophthalmic business assuming ownership of the business shall apply for a new certificate of registration from the board no later than 10 calendar days after the change of ownership is completed.

(b) This section does not apply to a change of location of business by a registered dispensing ophthalmic business.

*(Added by Stats. 2011, Ch. 389, Sec. 1. (SB 824) Effective January 1, 2012.)*

#### **ARTICLE 4. Review [2569- 2569.]**

**2569.** Notwithstanding any other law, the powers and duties of the board, as set forth in this chapter, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter were scheduled to be repealed as of January 1, 2018.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry
<b>FROM</b>	Cheree Kimball, Acting Assistant Executive Officer <i>prepared by Alexander Juarez, Enforcement Analyst</i>
<b>SUBJECT</b>	Agenda Item #23- Update, Discussion and Possible Action on Changes to Title 16, California Code of Regulations Section 1399.273 and Optician Disciplinary Guidelines Incorporated by Reference

**Summary:**

The proposed Optician Disciplinary Guidelines (Guidelines) are used in disciplinary action against applicants and registrants by protecting the consumers of opticianry services from unsafe, incompetent and/or negligent opticians. The Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and are modeled after the Optometry Disciplinary Guidelines but are modified to meet the needs of the Optician Program.

Staff requests that the Board review and provide any additional feedback on the proposed Optician Disciplinary Guidelines and recommends approval of the rulemaking package.

**If a motion to approve is desired:**

*“I move to approve the proposed text for California Code of Regulations Title 16, Section 1399.273; the Optician Disciplinary Guidelines and forms optc-ne1 and optc-qr1 incorporated by reference as presented and discussed here today; and direct staff to submit the text to Office of Administrative Law for posting for a 45 day public comment period; and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.”*

**History:**

The Dispensing Optician Committee (DOC) began a review of the Guidelines in August 2017 and completed the review in December 2019. Between 2017 and 2019, staff made minor revisions and restructured the Guidelines where appropriate based in part on the advice of the DOC. The DOC moved to send the Guidelines to the full Board for discussion and approval at the December 2019 meeting. Although agendized at the February 28, 2020 Board meeting, staff requested additional review via the Consumer Protection Committee (CPC), which reviewed the proposal at the July 17, 2020 public meeting.

The DOC and CPC provided feedback at the following meetings:

- [August 18, 2017](#)
- [January 4, 2019](#)
- [December 13, 2019](#)
- [July 17, 2020](#)

**Discussion:**

The Consumer Protection Committee (CPC) was tasked with reviewing the Optician Disciplinary Guidelines in preparation for the July 17, 2020 meeting. During the meeting, the Committee suggested minor amendments to promote consistency and provide clarity to enhance consumer protection. The CPC selected Dr. McIntyre to assist in providing oversight for the final changes to the current Guidelines for Board consideration. The CPC discussed amendments to the following areas:

**Attachment 1: Proposed CCR § 1399.273 Regulatory Authority Text**

This attachment contains the proposed text for §1399.273 of Division 13.5 of Title 16 of the California Code of Regulations.

**Attachment 2: Proposed Optician Disciplinary Guidelines**

These guidelines are incorporated by reference into §1399.273.

As noted above, the Guidelines are based on the current Optometry Disciplinary Guidelines and modified for the Opticianry program. The CPC made the following changes to Opticianry Disciplinary Guidelines:

- A. Definitions: To clarify the Mental Health Evaluation term and the Medical Health Evaluation term (terms 25 and 26, respectively, pages 16 – 18 of the DRAFT Guidelines), the definitions of “fit” and “fitting”, “adjust” and “adjusting”, and “ophthalmic lens” and “ophthalmic device” were added.
- B. Probation Monitoring Costs: The Probation Monitoring Costs section [p. 9 - 10 of DRAFT Guidelines] was reworded for clarity. The CPC recommended changing the language to clarify the respondent is responsible for any payments to the Board.
- C. Mental Health Evaluation term: Language for the optional section of the Mental Health Evaluation term [p. 16 of DRAFT Guidelines] has been modified. Previous language stated that it was optional that the Respondent not engage in fitting and adjusting until notified by the Board that they are mentally fit to practice. The CPC requested this to be rephrased to state that the Board can take the additional action of restricting the respondent from fitting and adjusting lenses or dispensing until notified by the Board.
- D. Medical Health Evaluation term: Language for the optional section of the Medical Health Evaluation term [p. 17 of DRAFT Guidelines] has been modified. Previous language stated that it was optional that the Respondent not engage in fitting and



adjusting until notified by the Board that they are mentally fit to practice. The CPC requested this to be rephrased to state that the Board can take the additional action of restricting the respondent from fitting and adjusting lenses or dispensing until notified by the Board.

- E. Global Change: All references to Registered Dispensing Opticians (RDOs) have been changed to Dispensing Ophthalmic Businesses. The terminology has been changed to minimize confusion between individual and business registrations.

In her review of the presented DRAFT of the Disciplinary Guidelines, Dr. McIntyre noted that the definition of “Ophthalmic Lens” and “Ophthalmic Device”, which currently states that lenses or devices “alters or changes the visual powers of the human eye”, should be updated to note that Plano lenses, while not altering visual power, have the ability to affect ocular tissue. The full text of the current definition can be found in number 3 on pages 17 and 18.

Attachment 3: Quarterly Report of Compliance (Form No. OPTC – QR1)

Quarterly Report of Compliance (Form No. OPTC – QR1) – this form is used by probationers for their quarterly report to the Board. Board staff made the following changes based on the CPC’s recommendations:

- F. Language for several questions have been developed into complete sentences. The CPC considered some questions to be incomplete and requested the Board staff develop the questions into more complete sentences to mitigate any confusion.

Attachment 4: Notice to Employers (Form No. OPTC – NE1)

Notice to Employers (Form No. OPTC – NE1) – During their probation period, probationers are required to inform their employers of the discipline imposed by providing the employer with a copy of the Decision and Order in this matter. The employer will inform the California State Board of Optometry, in writing, that they are aware of the discipline. “Employer” refers to the Dispensing Ophthalmic Business registrant where the probationer practices.

Attachments:

1. Proposed CCR § 1399.273 Regulatory Authority Text
2. Proposed Optician Disciplinary Guidelines
3. Quarterly Report of Compliance (Form No. OPTC – QR1)
4. Notice to Employers (Form No. OPTC – NE1)



**OPTICIANRY PROGRAM  
DISCIPLINARY GUIDELINES  
&  
UNIFORM STANDARDS RELATED TO SUBSTANCE  
ABUSE  
(DG 1, 05-2020)**

***“Protection of the Public Shall be the Highest Priority”  
Business and Professions Code, §3010.1***

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## **INTRODUCTION**

The mission of the California State Board of Optometry (Board) is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of optometry as well as opticianry. The Board's Optician Program registers and regulates Spectacle Lens Dispensers (SLDs), Contact Lens Dispensers (CLDs), Dispensing Ophthalmic Businesses (DOBs), and Non-resident Contact Lens Sellers (NCLS).

In keeping with its mandate to protect the consumers of optometric and opticianry services from unsafe, incompetent and/or negligent optometrists and opticians, the Board adopts the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Business and Professions Code (BPC) and the California Code of Regulations (CCR).

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that Administrative Law Judges (ALJ) clearly delineate the factual basis for their decisions. This is especially important if the ALJ deviates from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons and to evaluate the appropriateness of the decision.

If, at the time of hearing, the ALJ finds that the Respondent is not capable of safe practice for any reason, the Board favors outright revocation of the registration. If, however, the Respondent has demonstrated a capacity to practice safely, the Board recommends a stayed revocation order with probation.

Suspension of a registration may also be appropriate to protect the public while the Respondent corrects deficiencies in skills and education or participates in rehabilitation.

## REGULATORY AUTHORITY

***These guidelines are incorporated by reference in Section 1399.273 of Article 7 of Division 13.5 of Title 16 of the California Code of Regulations, as follows:***

### **§ 1399.273. Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Registrants.**

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the California State Board of Optometry (Board) shall consider the “Opticianry Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (DG 1 05/2020),” which is hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.) or after stipulation of the parties supported by the Attorney General Office’s reasons for recommending the stipulation, the Board finds that the evidence establishes that an individual is a substance-abusing registrant for purposes of section 315 of the Code, then in addition to any and all other relevant terms and conditions contained in the disciplinary guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance-Abusing Licensees shall apply, without deviation, and be used in any probationary order of the Board affecting that registrant.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 2546.3, 2558, and 315, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 2555, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.

## **FACTORS TO BE CONSIDERED**

In determining whether denial, revocation, suspension, or probation should be imposed in a given case, the following factors should be considered:

1. Nature and gravity of the act(s), offense(s), or crime(s) under consideration.
2. The nature and duties of the profession in which the applicant seeks registration or in which the registrant is registered.
3. Actual or potential harm to the public.
4. Actual or potential harm to any patient.
5. Prior disciplinary record.
6. Number and/or variety of current violations.
7. Mitigation evidence.
8. Whether there has been a showing of rehabilitation, if the applicant or registrant completed the criminal sentence at issue without a violation of parole or probation
9. Whether there has been a showing of rehabilitation when applying the Board's rehabilitation criteria.
10. Overall criminal record.
11. The number of years that have elapsed since the date of the offense(s).
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

## **INTRODUCTORY LANGUAGE STANDARD PROBATION CONDITIONS**

The following introductory language and all standard probation conditions shall be included in probationary decisions/orders. For applicants, Condition 8, Cost Recovery, does not apply. For registrants, all standard probation conditions apply.

### **PROBATIONARY TERMS AND CONDITIONS**

#### **MODEL DISCIPLINARY ORDERS**

##### **Revocation - Single Cause**

Registration No. \_\_\_\_\_ issued to Respondent is revoked. Cost recovery in the amount of \_\_\_\_ is due within 90 calendar days of the effective date of this decision or as directed by a Board-approved payment plan.

##### **Revocation - Multiple Causes**

Registration No. \_\_\_\_\_ issued to Respondent is revoked pursuant to Determination of Issues \_\_ separately and for all of them. Cost recovery [if any] in the amount of \_\_\_\_ is due within 90 calendar days of the effective date of this decision or within a Board-approved payment plan.

##### **Suspension - Single Cause**

Registration No. \_\_\_\_\_ issued to Respondent is suspended for a period of \_\_\_\_\_.

##### **Suspension - Multiple Causes (run concurrently)**

Registration No. \_\_\_\_\_ issued to Respondent is suspended pursuant to Determination of Issues \_\_, separately and for all of them. All suspensions shall run concurrently.

##### **Suspension - Multiple Causes (run consecutively)**

Registration No. \_\_\_\_\_ issued to Respondent is suspended for \_\_\_\_\_ pursuant to Determination of Issues \_\_. These suspensions shall run consecutively, for a total period of \_\_\_\_\_.

##### **Standard Stay Order**

However [revocation/suspension] is stayed and Respondent is placed on probation for \_\_\_\_\_ years upon the following terms and conditions:

##### **Cost Recovery for Revocations and Surrenders**

If and when respondent's registration is reinstated, they shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 123.5 in the amount of \$ \_\_\_\_\_. If requested, Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be

construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the registration.

### **MODEL PROBATIONARY ORDERS**

The following introductory language is to be included in decisions that place the Respondent's registration on probation.

**IT IS HEREBY ORDERED** that Registration No. \_\_\_\_\_ issued to Respondent is revoked. However, the revocation is stayed and Respondent's registration is placed on probation for \_\_\_ years on the following conditions:

#### **Option:**

Should the Board subsequently issue a new registration or license to Respondent during the probationary period, the new registration or license shall be immediately revoked. The revocation of the new registration or license shall be stayed, and the probation imposed by this decision and order will continue. Respondent shall remain subject to the same terms and conditions imposed by this disciplinary order.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for applicants, and for petitioners for reinstatement who are issued a registration that is placed on probation.

#### **Applicants who are placed on probation:**

The application of Respondent for registration is hereby granted. Upon successful completion of all registration requirements including payment of all fees and evaluation of the application, a registration shall be issued to Respondent. The registration shall immediately be revoked, the order of revocation stayed, and Respondent's registration placed on probation for a period of \_\_\_ years on the following conditions:

#### **Reinstatement of registration with conditions of probation:**

The application of Respondent for reinstatement of registration is hereby granted. A registration shall be issued to Respondent. The registration shall immediately be revoked, the order of revocation stayed, and Respondent's registration placed on probation for a period of \_\_\_ years on the following conditions:

**NOTE:** If cost recovery was ordered in the revocation or surrender of a registration and the petitioner has not paid the costs, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.



## **STANDARD TERMS AND CONDITIONS**

A probationary term is generally issued for a period of between three (3) and five (5) years, dependent upon whether any aggravating or mitigating factors exist. Standard conditions are imposed on each and every probationer regardless of the cause for discipline. For applicants, Condition 8, Cost Recovery, does not apply.

1. Obey all laws
2. Submit Quarterly Reports
3. Cooperate With Probation Monitoring Program
4. Probation Monitoring Costs
5. Function as a Dispensing Ophthalmic Business, Spectacle Lens Dispenser, Contact Lens Dispenser, or Nonresident Contact Lens Seller
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Valid Registration Status
10. Tolling for Out-Of-State Residence or Practice
11. Registration Surrender
12. Violation of Probation
13. Completion of Probation
14. Sale or Closure of a Dispensary Location

## **SEVERABILITY CLAUSE**

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

### **1. OBEY ALL LAWS**

Respondent shall obey all federal, state, and local laws governing the practice of opticianry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in their arrest, charges filed against Respondent, or a citation issued to Respondent.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any court or other governmental agency, including probation or parole conditions, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to any other disciplinary order from any other health care related board or any professional licensing

or certification agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

## **2. QUARTERLY REPORTS**

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (OPTC-QR1 (07/2020)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Spectacle Lens Dispenser/Contact Lens Dispenser/Dispensing Ophthalmic Business/Nonresident Contact Lens Seller] registration(s)

Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due every quarter for each year of probation throughout the entire length of probation.

Failure to submit complete and timely reports shall constitute a violation of probation.

## **3. COOPERATE WITH PROBATION MONITORING PROGRAM**

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, timely respond to all notices of reasonable requests, and submit reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative. Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's [Dispensing Ophthalmic Business /Spectacle Lens Dispenser/Contact Lens Dispenser/Nonresident Contact Lens Seller] registration(s).

## **4. PROBATION MONITORING COSTS**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

The Board may consider financial hardship in setting a repayment schedule.

In addition to any other disciplinary action taken by the Board, an unrestricted registration will not be issued at the end of the probationary period and the registration will not be renewed until all probation monitoring costs have been paid.

**5. FUNCTION AS A [DISPENSING OPHTHALMIC BUSINESS/SPECTACLE LENS DISPENSER/CONTACT LENS DISPENSER/NONRESIDENT CONTACT LENS SELLER]**

Respondent shall function as [a dispensing ophthalmic business/spectacle lens dispenser/contact lens dispenser/nonresident contact lens seller] for a minimum of 60 hours per month for 6 consecutive months.

**6. NOTICE TO EMPLOYER**

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of Respondent’s employers and supervisors and shall give written consent to the Board for the Board to communicate with Respondent’s employers and supervisors regarding the Respondent’s work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and/or condition.

Respondent shall inform their employer, and each subsequent employer during the probation period of the discipline imposed by this decision by providing their supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation or statement of issues in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that they are aware of the discipline, on the Notice to Employer form to be provided to the Respondent (OPTC – NE1 (7/2020)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

**7. CHANGES OF EMPLOYMENT OR RESIDENCE**

Respondent shall notify the Board and appointed probation monitor in writing, of any and all changes of employment, location, or address within 14 calendar days of such change. This includes but is not limited to termination or resignation from employment, change in employment status, and change in supervisors, administrators, or directors.

Respondent shall also notify their probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are acceptable for mailing purposes. Respondent must also provide their physical residence address.

**8. COST RECOVERY**

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$\_\_\_\_. If

requested, Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six months before the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of their good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period for up to one year without further hearing in order to comply with this condition. During the one-year extension, all conditions of probation will apply.

## **9. VALID REGISTRATION STATUS**

Respondent shall maintain a current, active, and valid registration for the length of the probation period. Failure to pay all fees and meet registration requirements prior to their registration expiration date shall constitute a violation of probation.

## **10. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon their return to California and before the commencement of any employment where representation as a [Dispensing Ophthalmic Business /spectacle lens dispenser/contact lens dispenser registration/nonresident contact lens seller] is/was provided.

Respondent's registration shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years or more. However, Respondent's registration shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case this two-year period shall begin on the date probation is completed or terminated in that state.

## **11. REGISTRATION SURRENDER**

During Respondent's term of probation, if they cease practicing due to retirement, health reasons, or are otherwise unable to satisfy any condition of probation, Respondent may surrender their registration to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered registration and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's registration shall be considered a disciplinary action and shall become a part of Respondent's registration history with the Board.

#### **12. VIOLATION OF PROBATION**

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

#### **13. COMPLETION OF PROBATION**

Upon successful completion of probation, Respondent's registration shall be fully restored.

#### **14. SALE OR CLOSURE OF A DISPENSARY LOCATION**

If Respondent sells or closes their dispensary location after the imposition of disciplinary action, Respondent shall ensure that patients are refunded money for work/services not completed or provided and shall not misrepresent to anyone the reason for the sale or closure of the dispensary location. The provisions of this condition in no way authorize the practice of opticianry by the Respondent during any period of registration suspension.

## **OPTIONAL PROBATION CONDITIONS**

The conditions imposed are dependent upon the violation(s) committed.

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (Dispensing Ophthalmic Businesses ONLY)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (Dispensing Ophthalmic Businesses ONLY)
29. Lens Prescriptions – Maintain Records (Dispensing Ophthalmic Businesses ONLY)
30. Restricted Practice
31. Restrictions as to Advertisement
32. Take and Pass ABO and/or NCLE Exams
33. Professional Education

### **15. COMMUNITY SERVICE**

The type of community service required of Respondent shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free services on a regular basis to a community or charitable facility or agency, amounting to a minimum of \_ (e.g. 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

### **16. PARTICIPATE IN GROUP SUPPORT MEETING**

Respondent shall attend at least one (1) group support meeting or equivalent during each week of probation, as approved or directed by the Board. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

### **17. NOTICE TO PATIENTS (Dispensing Ophthalmic Businesses ONLY)**

During the period of probation, Respondent shall post a notice in a prominent place in their dispensary location that is conspicuous and readable to the public. The notice shall state the Respondent's registration is on probation and shall contain the telephone number of the

California State Board of Optometry. Respondent shall also post a notice containing this information prominently on any website related to their business. The notice described above shall be approved by the Board before it is posted within 30 calendar days of the effective date of this decision.

### **18. ALCOHOL AND DRUG TREATMENT**

Respondent, at their expense, shall successfully complete a treatment regimen at a recognized and established program for (drugs/alcohol [select one or both]) in California of at least six months' duration and approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist, or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if they believe the Respondent cannot safely practice. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Respondent shall inform the program director, psychiatrist, or psychologist of their probationary status with the Board, and shall request that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing.

Positive results shall be reported immediately to the Board and may be used in administrative or disciplinary action.

### **19. WORKSITE MONITOR**

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities, including if applicable, as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

### **20. DIRECT SUPERVISION**

During the period of probation, Respondent shall be under the direct supervision of a registered contact/spectacle lens dispenser holding a current and valid unrestricted registration. "Direct supervision" means assignment to a registered contact/spectacle lens dispenser who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while they are functioning as a registered contact/spectacle lens dispenser. The appropriate level of supervision must be approved by the Board prior to engaging in practice.

Supervisor quarterly Reports of Performance are due for each year of probation and the entire

length of probation from each employer, as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their supervisor submits complete and timely reports. Failure to ensure each supervisor submits complete and timely reports shall constitute a violation of probation.

## **21. SUSPENSION**

As part of probation, Respondent shall be suspended from the practice of opticianry for a period of \_\_\_\_ (e.g., 90 calendar days) which will begin on the effective date of this decision. If not employed as an optician/dispenser or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board in writing that the employer is aware of the dates of suspension.

## **22. EMPLOYMENT LIMITATIONS**

Respondent shall not work in any health care setting as a supervisor of opticians/dispensers. The Board may additionally restrict Respondent from supervising technicians and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of opticianry or as an instructor in a Board-approved continuing education program.

Respondent shall work only in a regularly assigned, identified and predetermined worksite(s) at their address of record.

## **23. PSYCHOTHERAPY OR COUNSELING PROGRAM**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist, or counselor of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment, at Respondent's cost, until such time as the Board releases the Respondent from this requirement and only upon the recommendation of the treating psychotherapist or counselor.

The treating psychotherapist or counselor must submit quarterly reports to the Board. Reports are due each year of probation and the entire length of probation from the treating psychotherapist or counselor as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their treating psychotherapist or counselor submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo psychiatric or psychological evaluations by a Board-approved psychiatrist or psychologist.



**NOTE:** This condition is for those cases where the evidence demonstrates that the Respondent had impairment (mental illness, alcohol abuse, and/or drug abuse) related to the violations but is not presently a danger to patients.

## **24. MENTAL HEALTH EVALUATION**

Respondent shall, within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, to submit to a mental health evaluation, including psychological testing as appropriate, to determine their capability to perform the duties of a dispenser/optician. The evaluation will be performed by a psychiatrist, psychologist, or other licensed mental health practitioner approved by the Board. An immediate suspension may be imposed by the Board until further notification if the results from the mental health evaluation show the Respondent is unsafe to practice.

If Respondent fails to have the above evaluation submitted to the Board within 30 calendar days, Respondent shall immediately cease practice and shall not resume practice until notified by **the Board or its designee**. This period of suspension will not apply to the reduction of the probationary time period. The Board may waive or postpone this suspension only if significant documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the evaluation, and the Respondent must provide a specific date by which they will comply. Only one such waiver or extension may be permitted.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluator within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo treatment, Respondent shall, within 30 calendar days of the requirement notice, submit to the Board for prior approval the name and qualifications of a licensed psychiatrist, psychologist, or other licensed mental health practitioner of Respondent's choice. Upon approval of the treating psychiatrist, psychologist, or other licensed health practitioner, Respondent shall within 15 calendar days undergo treatment and shall continue such treatment until further notice from the Board or its designee.

The treating psychiatrist, psychologist, or other licensed mental health practitioner shall consider the information provided by the Board or any other information the treating psychiatrist, psychologist, or other mental health practitioner may deem pertinent prior to the commencement of treatment. Respondent shall have the psychiatrist, psychologist, or other health practitioner submit quarterly reports to the Board indicating whether or not the Respondent is capable of practicing opticianry safely. The quarterly reports are due each year of probation and the entire length of probation from the psychiatrist, psychologist, or other licensed mental health practitioner as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their psychiatrist, psychologist, or other licensed mental health practitioner submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

Respondent shall provide the Board with any and all medical records pertaining to treatment deemed necessary by the Board or its designee.

If, prior to the completion of probation, Respondent is found to be mentally incapable of resuming the practice of opticianry without restrictions, the Board shall retain jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally capable of resuming practice of opticianry without restrictions. Respondents shall pay the cost of the evaluation(s) and treatment.

Respondent shall not engage in fitting and adjusting ophthalmic lenses or devices or dispensing until notified by the Board of its determination that Respondent is mentally fit to practice safely.

For purposes of these guidelines, the following definitions shall apply:

1. "Fit" and "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others, designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
2. "Adjust" and "adjusting" means doing any or all of the following acts, either singly or in combination with others, adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
3. "Ophthalmic Lens" or "Ophthalmic Device" means any prescription lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices, ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

**NOTE:** This condition is for those cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations.

## **25. MEDICAL HEALTH EVALUATION**

Within 30 calendar days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's cost, by a physician selected by Respondent and approved by the Board, who shall furnish a medical report to the Board. Based on the medical evaluation, the Board or its designee may require Respondent to undergo medical treatment.

If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of notice of the requirement submit to the Board for

its prior approval the name and qualification of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment at Respondent's cost until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Quarterly reports are due each year of probation and the entire length of probation from the treating physician as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports may constitute a violation of probation and may result in further disciplinary action.

Respondent shall not engage in fitting and adjusting ophthalmic lenses or devices or dispensing until notified by the Board of its determination that Respondent is mentally fit to practice safely.

For purposes of these guidelines, the following definitions shall apply:

1. "Fit" and "fitting" means doing any or all of the following acts prior to the act of adjusting, either singly or in combination with others, designing, the taking of measurements to determine the size or shape or specifications, or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
2. "Adjust" and "adjusting" means doing any or all of the following acts, either singly or in combination with others, adapting, delivering or replacing the prescribed optical aids, pursuant and incidental to the filling of any prescription for lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices as specified in Section 2541, and prescriptions.
3. "Ophthalmic Lens" or "Ophthalmic Device" means any prescription lenses, spectacles, eyeglasses, contact lens, plano contact lens and other ophthalmic devices, ordered by a physician and surgeon or optometrist, that alters or changes the visual powers of the human eye.

**NOTE:** This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.

## **26. MEDICAL TREATMENT**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval the name and qualifications of a physician of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment at Respondent's cost until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports to the Board. Quarterly status reports are due each year of probation and the entire length of probation from the treating physician as

required by the Board or its designee.

Respondent is ultimately responsible for ensuring their physician submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require Respondent to undergo periodic medical evaluations by a Board-approved physician.

## **27. RESTITUTION**

Within 90 calendar days of the effective date of this decision, Respondent shall provide to the Board or its designee proof of restitution in the amount of \$\_\_\_ paid to \_\_\_.

## **28. AUDIT REQUIRED (Dispensing Ophthalmic Businesses ONLY)**

The Board shall require quarterly audits of patient visits, billings, and payments as a condition of probation.

Within 30 calendar days of the effective date of this decision, Respondent shall provide to the Board the names and qualifications of three third party auditors. The Board shall select one of the three auditors to audit Respondent's billings. During the audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices.

The Board shall provide the approved auditor with copies of the decision(s) and accusation(s), and a proposed auditing plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the auditor shall sign an affirmation that they have reviewed the terms and conditions of the Respondent's disciplinary order, fully understands the role of auditor, and agrees or disagrees with the proposed auditing plan set forth by the Board. If the auditor disagrees with the proposed auditing plan, the auditor shall submit a revised auditing plan with the signed affirmation for approval by the Board.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's patient visits, billings, and payments shall be audited by the approved auditor. Respondent shall make all of these records available for immediate inspection and copying on the premises by the auditor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain Board approval of an auditor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board to cease the practice of opticianry within three (3) calendar days after being so notified. Respondent shall cease practice until an auditor is approved to provide auditing responsibility.

The Board shall be advised of the results of the audit and may obtain any and all copies of any documents audited or the results of the audit. The cost of the audits shall be borne by

Respondent. Failure to pay for the audits in a timely fashion within ten (10) calendar days from receipt of an invoice for the cost of the audit shall constitute a violation of probation.

Quarterly reports of the audit results are due each year of probation and the entire length of probation from the auditor as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their auditor submits complete and timely reports. Failure to ensure each auditor submits complete and timely reports shall constitute a violation of probation

If the auditor resigns or is no longer available, Respondent shall, within five (5) days of such resignation or unavailability, submit to the Board, for prior approval, the names and qualifications of a replacement third party auditor who will assume that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement auditor within 60 calendar days of the resignation or unavailability of the auditor, Respondent shall receive a notification from the Board to cease the practice of opticianry within three (3) calendar days.

After being so notified, Respondent shall cease practice until a replacement auditor is approved and assumes auditing responsibility.

### **29. LENS PRESCRIPTIONS - MAINTAIN RECORDS (Dispensing Ophthalmic Businesses ONLY)**

Respondent shall maintain patient records of all lens prescriptions dispensed or administered by Respondent during probation, showing all the following:

1. Name and address of the patient;
2. Date dispensed;
3. Price of the services and goods involved in the prescription;

Respondent shall keep these patient records in a separate file, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

### **30. RESTRICTED PRACTICE**

[Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in procedures specified in paragraphs [ ] to [ ] of the decision. These restrictions shall be specifically defined in the decision and be related to the violation. Respondent shall be required to document compliance in the manner required by the Board.]

### **31. RESTRICTIONS ON ADVERTISEMENTS**

During the entire period of probation, the Respondent shall, prior to any publication or public dissemination, submit any and all advertisement of professional services in the field of opticianry to the Board for its prior approval. Such advertisement may be published or

disseminated to the public only after written approval by the Board.

### **32. TAKE AND PASS ABO AND/OR NCLE EXAM**

Respondent shall take and pass part(s) \_ of the American Board of Opticianry (ABO) Examination and/or the National Contact Lens Examination (NCLE). Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within twelve months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

### **33. PROFESSIONAL EDUCATION**

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board for its prior approval an educational program or course in areas of \_\_\_\_\_. The education program or course(s) shall consist of a minimum of \_\_\_ hours in each area.

Respondent is responsible for all costs associated with completing professional education requirements. Following completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide written proof of attendance in such course or courses approved by the Board.

## **UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES**

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance Abusing Healing Arts Licensees (rev. 4/20/11) (SACC). The Board's Uniform Standards not otherwise incorporated into the Standard or Optional Conditions are found in Required Conditions of Probation 34 and 35, and Discretionary Conditions of Probation 36, 37, and 38.

The Uniform Standards apply when dealing with substance-abusing registrants. If, after notice and hearing, the evidence establishes that the registrant is a substance abusing registrant, then Conditions of Probation 34 and 35 shall be imposed without deviation.

Conditions of Probation 36, 37, and 38 shall be considered where the registrant is found to be a substance abuser, and if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

### **REQUIRED CONDITIONS OF PROBATION**

#### **34. ABSTENTION FROM USE OF CONTROLLED SUBSTANCES/ALCOHOL**

Respondent shall abstain completely from the use or possession of alcohol, any and all other mood-altering drugs or substances, and their associated paraphernalia. Respondent shall identify for the Board a single physician, nurse practitioner, or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis. Quarterly reports are due for each year of probation throughout the entire length of probation as required by the Board or its designee.

Respondent is ultimately responsible for ensuring their physician, nurse practitioner, or physician assistant submits complete and timely reports. Failure to ensure each submission of complete and timely reports shall constitute a violation of probation.

The Board may require a single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records to the Board. Respondent shall also provide information of treating physicians, counselors, or any other treating professional as requested by the Board or its designee.

Respondent shall ensure that they are not in the presence of or in the same physical location

as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Any positive result that registers over the established laboratory cut-off level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's opticianry registration.

Respondent also understands and agrees that any positive result that registers over the established laboratory cut-off level shall be reported to each of Respondent's employers.

### **35. BIOLOGICAL FLUID TESTING**

Respondent, at their expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Testing shall be required during the entire probation period. The Respondent will be randomly drug-tested at the frequency outlined in Uniform Standards for Substance Abuse #4.

Respondent shall make daily contact with the testing provider to determine if they are required to submit a specimen for testing, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives and shall appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California, must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time after the request, Respondent understands that, while at any work site, any Board representative may request that the supervisor, manager, or director on duty observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time as Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance in violation of a probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and their employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reinstate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested or appear as requested by any Board representative for testing shall constitute a violation of probation and result in the filing of an accusation and/or a petition to revoke probation against Respondent's registration.



## **DISCRETIONARY CONDITIONS OF PROBATION**

### **36. CLINICAL DIAGNOSTIC EVALUATION**

Within 30 days of the effective date of the decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the registrant within the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the registrant has a substance abuse problem, is a threat to themselves or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the registrant's rehabilitation and safe practice. If the evaluator determines during the evaluation process that a registrant is a threat to themselves or others, the evaluator shall notify the Board within 24 hours of the determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing a minimum of 2 times per week.

Respondent shall request the evaluator submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless the Board grants the evaluator an extension, which shall not exceed 30 days.

Respondent shall not return to practice until the Board determines that they are able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what if any work limitations to place on a registrant, the Board will consider the factors set forth in the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee (SACC).

Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a registrant is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in Standard No. 11 of Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the SACC.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

### **37. PARTICIPATE IN GROUP SUPPORT MEETINGS WITH QUALIFIED FACILITATOR**

Respondent shall participate in group support meetings led by a facilitator who meets the qualifications and requirements as set forth in Standard No. 5 of the Uniform Standards

Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. Respondent shall submit dated and signed documentation confirming meeting attendance to the Board during the entire period of probation.

### **38. WORKSITE MONITOR UNDER UNIFORM STANDARDS**

Within 30 days of the effective date of the Decision, Respondent shall submit for the Board's approval the name of a proposed worksite monitor. Once approved, Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities as specified in Standard No. 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

## **RECOMMENDED DISCIPLINE BASED ON VIOLATION**

Below the Board provides recommended ranges of penalties for violations of statutes and regulations under the jurisdiction of the California State Board of Optometry. Each recommended discipline corresponds with the number assigned to the terms, conditions and standards referenced herein:

Probationary Terms and Condition – Standard Terms and Conditions;  
Optional Conditions; and Uniform Standards for Substance Abusing Licensees

Examples are given for illustrative purposes, but no attempt is made to list all possible violations. Optional conditions listed are those the Board deems most appropriate for the particular violation.

**Conviction of a Substantially Related Crime** Business and Professions Code (BPC) sections [490](#), [2555.1](#), 16 California Code of Regulations (CCR) [1399.270](#))

**Maximum Discipline:** Revocation

**Minimum Discipline:** Stayed Revocation, 3-5 years' probation

**Required:**

1-14. Standard Conditions

**If Warranted:**

15. Community Service
16. Participate in Group Support Meeting
17. Notice to Patients (Dispensing Ophthalmic Businesses ONLY)
18. Alcohol and Drug Treatment
19. Worksite Monitor
20. Direct Supervision
21. Suspension
22. Employment Limitations
23. Psychotherapy or Counseling Program
24. Mental Health Evaluation
25. Medical Health Evaluation
26. Medical Treatment
27. Restitution
28. Audit Required (Dispensing Ophthalmic Businesses ONLY)
29. Lens Prescriptions – Maintain Records (Dispensing Ophthalmic Businesses ONLY)
30. Restrictions as to Advertisement
31. Take and Pass ABO and/or NCLE Exams
32. Professional Education
33. Abstention From Use of Controlled Substances/Alcohol
34. Biological Fluid Testing
35. Clinical Diagnostic Evaluation
36. Participate in Group Support Meetings with Qualified Facilitator
37. Worksite Monitor Under Uniform Standards

**Dishonesty, False Statement of Application** (BPC sections [475](#), [480](#))

**Maximum Discipline:** Revocation

**Minimum Discipline:** Stayed Revocation, 3-5 years' probation

**Required:**

1-14. Standard Conditions

**If Warranted:**

21. Suspension

33. Professional Education - Ethics

**Prohibited Arrangements with Optometrists** (BPC section [655](#))

**Maximum Discipline:** Revocation

**Minimum Discipline:** Stayed Revocation, 3-5 years' probation

**Required:**

1-14. Standard Conditions

**If Warranted:**

19. Worksite Monitor

21. Suspension

31. Restrictions on Advertisements

**Disseminating False, Fraudulent, Misleading, or Deceptive Information** (BPC section [651](#))

**Maximum Discipline:** Revocation

**Minimum Discipline:** Stayed Revocation, 3-5 years' probation

**Required:**

1-14. Standard Conditions

30. Restrictions on Advertisements

**If Warranted:**

15. Community Service

19. Worksite Monitor

21. Suspension

27. Restitution

**Dispensing Lenses Below Industry Standard** (BPC section [2541.3](#))

**Maximum Discipline:** Revocation

**Minimum Discipline:** Stayed Revocation, 3-5 years' probation

**Required:**

1-14. Standard Conditions

**If Warranted:**

- 15. Community Service
- 19. Worksite Monitor
- 20. Direct Supervision
- 21. Suspension
- 27. Restitution
- 32. Take and Pass ABO and/or NCLE Exams
- 33. Professional Education

**Opticianry Disciplinary Guidelines – Proposed Text**

**Add to California Code of Regulations Title 16, Division 13.5, Article 7, Section 1399.273 as follows:**

**§ 1399.273. Optician Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Registrants.**

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the California State Board of Optometry (Board) shall consider the “Opticianry Program Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (DG 1 05/2020),” which is hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.) or after stipulation of the parties supported by the Attorney General Office’s reasons for recommending the stipulation, the Board finds that the evidence establishes that an individual is a substance-abusing registrant for purposes of section 315 of the Code, then in addition to any and all other relevant terms and conditions contained in the disciplinary guidelines, the terms and conditions that incorporate the Uniform Standards Related to Substance-Abusing Licensees shall apply, without deviation, and be used in any probationary order of the Board affecting that registrant.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 2546.3, 2558, and 315, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 315, 315.2, 315.4, 480, and 2555, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code.



Case Number: \_\_\_\_\_

Registration Numbers: \_\_\_\_\_

Year:			
1 <sup>st</sup>		3 <sup>rd</sup>	
2 <sup>nd</sup>		4 <sup>th</sup>	

## Quarterly Report of Compliance

(Return to address shown above)

Please Print or Type

List name exactly as it appears on your current registration.			
Last	Middle I.	First	
Number	Street	State	
Number	Street	State	

1. Have you been arrested, charged, or convicted of any violation of Federal, State, or local laws?	Yes	No	
2. Have you complied with all opticianry laws?	Yes	No	
3. Have you been disciplined by any other health-care related board or professional licensing or certification regulatory agency in California or elsewhere?	Yes	No	

1. Do you understand that omission or falsification in any manner of any information on your quarterly reports shall constitute a violation of probation?							Yes	No
2. Do you understand that failure to submit complete and timely reports shall constitute a violation of probation?							Yes	No
1. Have you complied with all requirements of probation?							Yes	No
2. Have you appeared for meetings when requested?							Yes	No
3. Have you claimed all certified mail, responded to all notices, and submitted reports as directed?							Yes	No
4. Have you contacted your probation monitor with any questions or concerns regarding probation?							Yes	No
1. Since the last quarterly report, have you had any problem meeting the minimum number of hours?							Yes	No
2. If yes, please explain:								
3. Since the last quarterly report, please indicate the number of hours worked per month:								
<b>First Quarter</b>		<b>Second Quarter</b>		<b>Third Quarter</b>		<b>Fourth Quarter</b>		
<b>Month</b>	<b>Hours</b>	<b>Month</b>	<b>Hours</b>	<b>Month</b>	<b>Hours</b>	<b>Month</b>	<b>Hours</b>	
January		April		July		October		
February		May		August		November		
March		June		September		December		

6. Notice to Employer



1. Does the Board have the names, addresses, and telephone numbers of all employers?			Yes	No
Last Name		First Name	Middle I.	License #
Phone Number			Email Address	
2. If no, please provide the following information:				
3. Have you provided your employer a copy of the decision and order and the accusation or statement of issues in this matter?			Yes	No
4. Have you provided the Board with written confirmation from each employer that they are aware of your Discipline?			Yes	No
If NO, please have your employer submit a completed "Notice to Employer" form immediately.				
1. Since the last quarterly report, has there been any changes of employment, location, address of record, and/or residence?			Yes	No
2. If YES, have you submitted written notification your monitor and the Board within 14 calendar days of change?			Yes	No
3. If NO, please explain				
1. Have you paid the total cost recovery amount in full?			Yes	No
2. If NO, are you participating in a Board approved payment plan?			Yes	No
3. If YES, have you been able to make every payment on time since your last quarterly report?			Yes	No
4. If NO, please explain (include dates you're able to submit payments, amounts, and documentation of why you are unable to make payments):				
1. Since your last quarterly report, have you maintained a current, active, and valid registration?			Yes	No
2. If NO, please explain:				
<b>10.</b>	<b>Tolling for Out-of-State Residence or Practice</b>			

	1. Since your last quarterly report, have you resided or practiced outside of California for over 30 calendar days?	Yes	No
	2. If YES, please explain:		
	If you cease to practice due to retirement, health reasons, or are otherwise unable to satisfy any condition of probation, you may surrender your registration. Do you wish to surrender your registration at this time?	Yes	No
	If YES, please explain:		
	Do you acknowledge that if the Board files an Accusation or Petition to Revoke Probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final?	Yes	No
	Do you acknowledge that no petition for modification of discipline shall be considered while there is an Accusation or Petition to Revoke Probation or other discipline pending against you?	Yes	No
	Do you acknowledge that, upon successful completion of probation, your registration shall be fully restored?	Yes	No
	1. Since your last quarterly report, have you sold or closed your dispensary location?	Yes	No
	2. If YES, please explain how you have ensured the continuity of patient care and the transfer of patient records. In addition, state if and when you plan to refund patients for any work/services not completed or provided.		
	1. Since your last quarterly report, have you been able to meet the required minimum number of hours of community service?	Yes	No
	2. If NO, please explain:		
<b>16</b>	<b>Participate in Group Support Meetings</b>		

	1. Since your last quarterly report, have you attended at least one group support meeting per week?	Yes	No
	2. If YES, have you attached the required documentation confirming such attendance?	Yes	No
	3. Explain any NO answers to questions 1 and 2:		
<b>17</b>	<b>Notice to Patients (RDO Only)</b>		
	1. Have you had your "Notice to Patients" approved by the Board?	Yes	No
	2. If NO, please explain:		
	3. If YES, where is this notice posted in your office?		
<b>18</b>	<b>Alcohol and/or Drug Treatment</b>		
	1. Have you successfully completed a Board approved treatment program?	Yes	No
	2. Have you submitted proof of completion to the Board?	Yes	No
	3. Please explain any NO answers:		
<b>19</b>	<b>Worksite Monitor</b>		
	1. Do you currently have a Board approved worksite monitor?	Yes	No
	Monitor's Name:	Registration #:	Phone #:
	2. If YES, has the monitor been able to follow the Board approved monitoring plan since your last quarterly report?	Yes	No
	3. To the best of your knowledge, has the worksite monitor submitted the required quarterly reports to the Board?	Yes	No
	4. Explain any NO answers to questions 1-3:		

<b>20</b>	<b>Direct Supervision</b>		
	1. Since your last quarterly report, have you been under direct supervision of a registered contact and/or spectacle lens dispenser?	Yes	No
	Supervisor's Name:	Registration #:	Phone# :
	2. If YES, is the supervisor able to follow the Board approved level of supervision?	Yes	No
	3. To your knowledge, has the supervisor submitted the required quarterly reports to the Board?	Yes	No
	4. Explain any NO answers to questions 1-3:		
<b>21</b>	<b>Suspension</b>	<b>Dates of Suspension:</b>	
	1. Have you completely ceased the practice of opticianry during the period indicated above, pursuant to your Order?	Yes	No
	2. If NO, please explain, including periods of practice and why:		
<b>22</b>	<b>Employment Limitations</b> Since your last quarterly report, have you:		
	1. Have you worked in any health care setting as a supervisor of opticians?	Yes	No
	2. Have you worked as a faculty member in a school of opticianry or as an instructor in a CE program?	Yes	No
	3. Have you worked in a "float" capacity?	Yes	No
	4. Explain any NO answers to questions 1-3:		
<b>23</b>	<b>Psychotherapy or Counseling Program</b>		
	1. Since your last quarterly report, have you participated in treatment by a Board approved psychotherapist or counselor?	Yes	No
	Therapist/Counselor:	License#:	Phone#:
	2. To the best of your knowledge, has your psychotherapist/counselor submitted the required quarterly reports to the Board?	Yes	No
	3. Please explain any NO answers to questions 1 and 2:		

<b>24</b>	<b>Mental Health Evaluation</b>		
	1. Since your last quarterly report, have you undergone a mental health evaluation?	Yes	No
	Evaluator:	License#:	Date(s) of Evaluation(s):
	2. If applicable, have you continued the evaluator's recommended restrictions, conditions, and/or treatment plan?	Yes	No
	3. To the best of your knowledge, has the evaluator submitted all required quarterly reports to the Board?	Yes	No
	4. Please explain any NO answers to questions 1-3:		
<b>25</b>	<b>Medical Health Evaluation</b>		
	1. Since your last quarterly report, have you undergone a medical health evaluation?	Yes	No
	Physician:	License#:	Date(s) of Evaluation(s):
	2. If applicable, have you continued the physicians recommended treatment?	Yes	No
	3. To the best of your knowledge, has the evaluator submitted all required quarterly reports to the Board?	Yes	No
	4. Please explain any NO answers to questions 1-3:		
<b>26</b>	<b>Medical Treatment</b>		
	1. Since your last quarterly report, have you participated in treatment by a Board approved physician?	Yes	No
	Physician:	License #:	Phone #:
	2. To the best of your knowledge, has your physician submitted the required quarterly reports to the Board?	Yes	No
	3. Please explain any NO answers to questions 1 and 2:		

<b>27</b>	<b>Restitution</b>	<b>Amount Due:</b>	<b>Paid To:</b>		
	1. Have you paid the required restitution amount above, pursuant to your Order?			Yes	No
	2. If NO, explain:				
<b>28</b>	<b>Audit Required (RDO Only)</b>				
	1. Do you currently have a Board approved auditor?			Yes	No
	Auditor's Name:	License #:	Phone #:		
	2. If YES, has the auditor been able to follow the Board approved auditing plan since your last quarterly report?			Yes	No
	3. To the best of your knowledge, has the auditor submitted the required quarterly reports to the Board?			Yes	No
	4. Explain any NO answers to questions 1-3:				
<b>29</b>	<b>Lens Prescriptions – Maintain Records (RDO Only)</b>				
	1. Are you maintaining patient records of all lens prescriptions dispensed or administered by you?			Yes	No
	2. Are these patient records available for inspection and copying by the Board or its designee?			Yes	No
	3. Explain any NO answers to questions 1 and 2:				
<b>30</b>	<b>Restricted Practice</b>				
	1. Since your last quarterly report, have you practiced in the areas specified in this condition of probation?			Yes	No
	2. If YES, explain:				
<b>31</b>	<b>Restrictions as to Advertisement</b>				
	1. Since your last quarterly report, have you had all advertisements of professional services approved prior to public publishing/dissemination?			Yes	No
	2. If NO, explain:				

<b>32</b>	<b>Take and Pass ABO and/or NCLE Exams</b>			
	1. Have you passed the ABO and/or NCLE?	Yes	Date Passed:	No
	2. If NO, have you scheduled the exam?	Yes	When:	No
	3. If NO to question 2, please explain:			
<b>33</b>	<b>Professional Education</b>	<b>Required area(s) of study:</b>		
	1. Did you submit an education program/course in the areas indicated above within the required timeframe, pursuant to your Order?	Yes	No	
	2. If NO, explain:			
	3. Since your last quarterly report, have you completed any CE for this condition?	Yes	No	
	Course Name:	Course Provider:	Completion Date (attach certificate):	
<b>Probation Compliance (Standard Alcohol/Drug Conditions)</b>				
<b>34</b>	<b>Abstention from Use of Controlled Substances/Alcohol</b>			
	1. Have you abstained from alcohol and all other mood altering drugs, substances and their associated paraphernalia?	Yes	No	
	2. Have you informed the Board of any prescriptions for mood altering drugs and/or other controlled substances?	Yes	No	
	3. If YES to question 2, have you identified to the Board a single physician, nurse practitioner, or physician assistant who is aware of your substance abuse history and is monitoring your prescriptions?	Yes	No	
	4. If YES to question 3, has the single physician, nurse practitioner, or physician assistant provided the Board with quarterly reports?	Yes	No	
	5. Please explain any NO answers to questions 2-4:			

<b>35</b>	<b>Biological Fluid Testing</b> Since your last quarterly report, have you:		
	1. Have you made daily contact with the Board's testing vendor to determine if you need to submit to testing?	Yes	No
	2. Have you submitted to all testing when selected?	Yes	No
	3. Explain any NO answers to questions 1 and 2, including when and why:		

**Outstanding Questions, Comments, or Concerns related to your probation**

	1. Do you currently have any questions, comments, or concerns that have yet to be addressed by your probation monitor?	Yes	No
	2. If YES, please explain, including when you initially brought your concerns to your probation monitor and any response, if any, that you've received.		

**Declaration and Signature:**

***I hereby submit this Quarterly Report as required by the California Department of Consumer Affairs, Board of Optometry and its order of probation thereof, and declare under penalty of perjury the laws of the State of California that I have read the foregoing report in its entirety and know its contents and that all statements made are truth in every respect, and understand that misstatements of omissions of material fact may be cause for revocation of probation.***

\_\_\_\_\_

Signature Date

Quarter	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Months covered:	January	April	July	October
	February	May	August	November
	March	June	September	December
Due:	April 1 - 7	July 1 - 7	October 1 - 7	January 1 - 7





## Notice to Employer

During their probation period, probationers are required to inform their employers of the discipline imposed by providing the employer with a copy of the Decision and Order in this matter. The employer will inform the California State Board of Optometry, in writing, that they are aware of the discipline. “Employer” refers to the Registered Dispensing Optician registrant where the probationer practices.

Section A: Probationer Information			
Probationer Name		Case Number	
Registration Number(s)		Registration Type <input type="checkbox"/> Spectacle Lens Dispenser <input type="checkbox"/> Contact Lens Dispenser	
Section B: Employer Information			
Business Name		Registration Number	Phone Number
Address	City	State	Zip Code
Date Probationer Began Employment			
<b>Employer Only:</b> I have received a complete copy of the Board Decision and Order, as well as the Statement of Issues or Accusation in the disciplinary case referenced above.			
Employer’s Name			
Employer’s Signature		Date	



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Dr. Debra McIntyre, O.D., Secretary
<b>SUBJECT</b>	Agenda Item #24 – Future Agenda Items

The Board may wish to discuss items to be placed on a future agenda, as proposed by board members, staff, or the public.



## ISSUE MEMORANDUM

<b>DATE</b>	August 14, 2020
<b>TO</b>	Members, California State Board of Optometry (CSBO)
<b>FROM</b>	Mark Morodomi, President
<b>SUBJECT</b>	Agenda Item #25 - Adjournment

If an adjournment is made, please note the time for the record and announce any future public meetings, which will be held via WebEx teleconference:

- September 17, 2020 Dispensing Optician Committee Meeting
- September 18, 2020 Committee Meetings
- October 23, 2020 Full Board Meeting